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A LEGISLATIVE HISTORY OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 (PUBLIC LAW 99-499)

TOGETHER WITH

A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

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CHAPTER IV

CONFERENCE REPORT

[From the Congressional Record, Feb. 7, 1986, p. S1204]

Appointment of Conferees

SUPERFUND IMPROVEMENT ACT OF 1985

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2005, Superfund.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendments to the amendments of the Senate to the bill (H.R. 2005) entitled "An Act to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed conferees:

From the Committee on Energy and Commerce, solely for the consideration of titles I-III of the House amendments to the Senate amendments, and the entire Senate amendments, except for title II: Mr. Dingell, Mr. Florio, Mr. Eckart of Ohio, Mr. Hall of Texas, Mr. Tauzin, Mr. Swift (solely for the consideration of sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendments to the Senate amendments, and modifications thereof committed to conference, including section 157 of the Senate amendments), Mr. Wyden (solely for the consideration of sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendments to the Senate amendments, and modifications thereof committed to conference): Mr. Broyhill, Mr. Lent, Mr. Ritter, and Mr. Fields.

From the Committee on Public Works and Transportation, solely for the consideration of titles I, II (except for section 205) and IV of the House amendments to the Senate amendments, and title I of the Senate amendments, except for sections 110, 111, 127, 157, and 160 thereof: Mr. Howard, Mr. Anderson, Mr. Roe, Mr. Breaux, Mr. Mineta, Mr. Edgar, Mr. Snyder, Mr. Hammerschmidt, Mr. Stangeland, and Mr. Gingrich.

From the Committee on Public Works and Transportation, solely for the consideration of title III of the House amendments to the Senate amendments, and sections 110, 111, 127, and 160 of title I of the Senate amendments: Mr. Anderson, Mr. Roe, Mr. Edgar, Mr. Snyder, and Mr. Hammerschmidt.

From the Committee on Ways and Means, solely for the consideration of title V of the House amendments to the Senate amendments, and title II of the Senate amendments: Mr. Rostenkowski, Mr. Pickle, Mr. Rangel, Mr. Stark, Mr. Downey of New York, Mr. Russo, Mr. Pease, Mr. Duncan, Mr. Archer, Mr. Vander Jagt, and Mr. Frenzel.

From the Committee on Merchant Marine and Fisheries, solely for the consideration of sections 104, 107, 108, 111, 113, 116, 121, and 122 of title I of the House amendments to the Senate amendments, and modifications thereof committed to conference: Mr. Jones of North Carolina, Mr. Biaggi, Mr. Studds, Mr. Young of Alaska, and Mr. Davis.

From the Committee on Merchant Marine and Fisheries, solely for the consideration of title IV of the House amendments to the Senate amendments, and modifications thereof committed to conference: Mr. Jones of North Carolina, Mr. Biaggi, Mr. Studds, Ms. Mikulski, Mr. Lowry of Washington, Mr. Tauzin, Mr. Young of Alaska, Mr. Davis, Mr. Lent, and Mr. Fields.

From the Committee on the Judiciary, solely for the consideration of sections 107, 113, 117, 119, and 122 of title I and sections 203 and 206 of title II of the House amendments to the Senate amendments, and modifications thereof committed to conference: Mr. Rodino, Mr. Glickman, Mr. Frank, Mr. Fish, and Mr. Kindness.

From the Committee on Armed Services, solely for the consideration of section 213 of title II of the House amendments to the Senate amendments, and section 162 of title I of the Senate amendments: Mr. McCurdy and Mr. Martin of New York.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendments to the Senate amendments and agree to the conference requested by the House, and the Chair be authorized to appoint conferees on the part of the Senate from the Environment and Public Works Committee for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments. I also ask that the Chair appoint conferees from the Finance Committee for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments.

The motion was agreed to; and the Acting President pro tempore [Mr. Quayle] appointed, from the Committee on Environment and Public Works, Senators STAFFORD, CHAFEE, SIMPSON, HUMPHREY, DOMENICI, DURENBERGER, BENTSEN, MOYNIHAN, MITCHELL, BAUCUS, and LAUTENBERG, and from the Committee on Finance, Senators PACKWOOD, DOLE, ROTH, LONG, and BENTSEN.

Mr. DOLE. Mr. President, I ask unanimous consent that at a later date, the Chair have the authority to appoint conferees on the part of the Judiciary Committee, with concurrence of the majority and minority leaders, for the purpose of joining in the consideration of sections 135, 143, 144 and to the extent it may affect the Federal courts or relate to claims against the United States, section 150 together with such amendments related directly thereto as may have been adopted by the House.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

[From the Congressional Record, Oct. 3, 1986, p. H9032]

CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

Mr. ECKART of Ohio submitted the following conference report and statement on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes:

99th Congress *2d Session*	HOUSE OF REPRESENTATIVES	**Report** 99-962

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

October 3, 1986.—Ordered to be printed

Mr. Eckart, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 2005]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments and Reauthorization Act of 1986".

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Sec. 1. Short title and table of contents.
Sec. 2. CERCLA and Administrator.
Sec. 3. Limitation on contract and borrowing authority.
Sec. 4. Effective date.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

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Sec. 102. Reportable quantities.
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Sec. 201. Post-closure liability program study, report to Congress, and suspension of liability transfers.
Sec. 202. Hazardous materials transportation.
Sec. 203. State procedural reform.
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Sec. 205. Cleanup of petroleum from leaking underground storage tanks.
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Sec. 207. Indian tribes.
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Sec. 323. Provision of information to health professionals, doctors, and nurses.
Sec. 324. Public availability of plans, data sheets, forms, and followup notices.
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Sec. 329. Definitions.
Sec. 330. Authorization of appropriations.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

Sec. 401. Short title.
Sec. 402. Findings.
Sec. 403. Radon gas and indoor air quality research program.
Sec. 404. Construction of title.
Sec. 405. Authorizations.

SEC. 2. CERCLA AND ADMINISTRATOR.

As used in this Act—

(1) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. LIMITATION ON CONTRACT AND BORROWING AUTHORITY.

Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specified in section 121(b) of this Act or in any other provision of titles I, II, III, and IV of this Act, the amendments made by titles I through IV of this Act shall take effect on the enactment of this Act.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

SEC. 101. AMENDMENTS TO DEFINITIONS.

(a) INDIAN TRIBE.—Paragraph (16) of section 101 of CERCLA (defining "natural resources") is amended by striking "or" the last time it appears and inserting before the punctuation at the end thereof the following: ", any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe".

(b) STATE OR LOCAL GOVERNMENT LIMITATION.—Paragraph (20) of section 101 of CERCLA (defining "owner or operator") is amended as follows:

(1) Add the following new subparagraph at the end thereof:

"(D) The term 'owner or operator' does not include a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.".

(2) Amend clause (iii) of subparagraph (A) to read as follows: "(iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.".

(3) Capitalize the first word of subparagraphs (B) and (C) and substitute a period for the semicolon at the end of subparagraphs (A), (B), and (C).

(c) Release.—Paragraph (22) of section 101 of CERCLA (defining "release") is amended by inserting after "environment" the following: "(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant)".

(d) Remedial Action.—Paragraph (24) of section 101 of CERCLA (defining "remedy" and "remedial action") is amended as follows:

(1) Strike "welfare. The term does not include offsite transport" and all that follows down through the semicolon at the end of such paragraph and insert "welfare; the term includes offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.".

(2) Strike "or" before "contaminated materials" and insert"and associated".

(e) Response.—Section 101(25) of CERCLA (defining "respond" and "response") is amended by inserting at the end thereof the following: ", all such terms (including the terms 'removal' and 'remedial action') include enforcement activities related thereto.".

(f) Additional Definitions.—Section 101 of CERCLA is amended by striking out "; and" at the end of paragraph (31) and substituting a period, by changing the semicolons at the end of paragraphs (1) through (29) to periods, by inserting "The term" at the beginning of paragraphs (1) through (22) and paragraphs (28) and (31), by inserting "The terms" at the beginning of paragraphs (23) through (27) and paragraphs (29),(30), and (32) by striking out ", the term" in the material preceding paragraph (1), and by adding the following new paragraphs at the end thereof:

"(33) The term 'pollutant or contaminant' shall include, but not be limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term 'pollutant or contaminant' shall not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) and shall not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

"(34) The term 'alternative water supplies' includes, but is not limited to, drinking water and household water supplies.

"(35)(A) The term 'contractual relationship', for the purpose of section 107(b)(3), includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is

located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) is also established by the defendant by a preponderance of the evidence:

"(i) At the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the facility.

"(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

"(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of section 107(b)(3) (a) and (b).

"(B) To establish that the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

"(C) Nothing in this paragraph or in section 107(b)(3) shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph, if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under section 107(a)(1) and no defense under section 107(b)(3) shall be available to such defendant.

"(D) Nothing in this paragraph shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

"(36) The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for

the special programs and services provided by the United States to Indians because of their status as Indians.".

SEC. 102. REPORTABLE QUANTITIES.

Section 102(a) of CERCLA is amended by adding at the end thereof the following new sentences: "For all hazardous substances for which proposed regulations establishing reportable quantities were published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall promulgate under this subsection final regulations establishing reportable quantities not later than December 31, 1986. For all hazardous substances for which proposed regulations establishing reportable quantities were not published in the Federal Register under this subsection on or before March 1, 1986, the Administrator shall publish under this subsection proposed regulations establishing reportable quantities not later than December 31, 1986, and promulgate final regulations under this subsection establishing reportable quantities not later than April 30, 1988.".

SEC. 103. NOTICES; PENALTIES.

Section 103(b) of CERCLA is amended by striking out "paragraph" in the last sentence and inserting in lieu thereof "subsection" and by adjusting the left hand margin of the text of such subsection following "federally permitted release," the third place it appears so that there is no indentation of such text.

SEC. 104. RESPONSE AUTHORITIES.

(a) RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES; PUBLIC HEALTH THREATS.—Section 104(a)(1) of CERCLA is amended by striking ", unless the President determines" and all that follows down through "party." and inserting a period and the following: "When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with section 122. No remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS and only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any such arrangements as a response action contractor, or as a person hired or retained by such a response action contractor, with respect to the release or facility in question. The President shall give primary attention to those releases which the President deems may present a public health threat.".

(b) REMOVAL ACTION.—Section 104(a)(2) of CERCLA is amended to read as follows:

"(2) REMOVAL ACTION.—Any removal action undertaken by the President under this subsection (or by any other person referred to in

section 122) should, to the extent the President deems practicable, contribute to the efficient performance of any long term remedial action with respect to the release or threatened release concerned.".

(c) Limitations on Response.—Section 104(a) of CERCLA is further amended by adding after paragraph (2) the following new paragraphs:

"(3) Limitations on Response.—The President shall not provide for a removal or remedial action under this section in response to a release or threat of release—

"(A) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

"(B) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures; or

"(C) into public or private drinking water supplies due to deterioration of the system through ordinary use.

"(4) Exception to Limitations.—Notwithstanding paragraph (3) of this subsection, to the extent authorized by this section, the President may respond to any release or threat of release if in the President's discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.".

(d) Coordination of Investigations.—Section 104(b) of CERCLA is amended by inserting "(1) Information; Studies and Investigations.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) Coordination of Investigations.—The President shall promptly notify the appropriate Federal and State natural resource trustees of potential damages to natural resources resulting from releases under investigation pursuant to this section and shall seek to coordinate the assessments, investigations, and planning under this section with such Federal and State trustees.".

(e) Initial Obligation of Fund.—

(1) Limitation.—Section 104(c)(1) of CERCLA is amended by striking out "$1,000,000" and "six months" and inserting in lieu thereof "$2,000,000" and "12 months", respectively.

(2) Continued response.—Section 104(c)(1) of CERCLA is amended by inserting before "obligations" the following: "or (C) continued response action is otherwise appropriate and consistent with the remedial action to be taken".

(f) Facilities Owned and Operated by States.—Paragraph (3) of section 104(c) of CERCLA is amended by striking out "(ii) at least" and all that follows through the period at the end thereof and inserting "(ii) 50 percent (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of any sums expended in response to a release at a facility, that was operated by the State or a political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances therein. For the purpose of clause (ii) of this subparagraph, the term 'facility' does not include navigable waters or the beds underlying those waters.".

(g) CROSS REFERENCE TO CLEANUP STANDARDS.—Section 104(c)(4) of CERCLA is amended to read as follows:

"(4) SELECTION OF REMEDIAL ACTION.—The President shall select remedial actions to carry out this section in accordance with section 121 of this Act (relating to cleanup standards).".

(h) STATE CREDITS.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (4):

"(5) STATE CREDITS.—

"(A) GRANTING OF CREDIT.—The President shall grant a State a credit against the share of the costs, for which it is responsible under paragraph (3) with respect to a facility listed on the National Priorities List under the National Contingency Plan, for amounts expended by a State for remedial action at such facility pursuant to a contract or cooperative agreement with the President. The credit under this paragraph shall be limited to those State expenses which the President determines to be reasonable, documented, direct out-of-pocket expenditures of non-Federal funds.

"(B) EXPENSES BEFORE LISTING OR AGREEMENT.—The credit under this paragraph shall include expenses for remedial action at a facility incurred before the listing of the facility on the National Priorities List or before a contract or cooperative agreement is entered into under subsection (d) for the facility if—

"(i) after such expenses are incurred the facility is listed on such list and a contract or cooperative agreement is entered into for the facility, and

"(ii) the President determines that such expenses would have been credited to the State under subparagraph (A) had the expenditures been made after listing of the facility on such list and after the date on which such contract or cooperative agreement is entered into.

"(C) RESPONSE ACTIONS BETWEEN 1978 AND 1980.—The credit under this paragraph shall include funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111.

"(D) STATE EXPENSES AFTER DECEMBER 11, 1980, IN EXCESS OF 10 PERCENT OF COSTS.—The credit under this paragraph shall include 90 percent of State expenses incurred at a facility owned, but not operated, by such State or by a political subdivision thereof. Such credit applies only to expenses incurred pursuant to a contract or cooperative agreement under subsection (d) and only to expenses incurred after December 11, 1980, but before the date of the enactment of this paragraph.

"(E) ITEM-BY-ITEM APPROVAL.—In the case of expenditures made after the date of the enactment of this paragraph, the President may require prior approval of each item of expenditure as a condition of granting a credit under this paragraph.

"(F) USE OF CREDITS.—Credits granted under this paragraph for funds expended with respect to a facility may be used by the State to reduce all or part of the share of costs otherwise required to be paid by the State under paragraph (3) in connection with remedial actions at such facility. If the amount of funds for which credit is allowed under this paragraph exceeds

such share of costs for such facility, the State may use the amount of such excess to reduce all or part of the share of such costs at other facilities in that State. A credit shall not entitle the State to any direct payment.".

(i) Treatment of Certain Activities as Maintenance or Remedial Action.—Section 104(c) of CERCLA is amended by adding the following new paragraphs after paragraph (5):

"(6) Operation and Maintenance.—For the purposes of paragraph (3) of this subsection, in the case of ground or surface water contamination, completed remedial action includes the completion of treatment or other measures, whether taken onsite or offsite, necessary to restore ground and surface water quality to a level that assures protection of human health and the environment. With respect to such measures, the operation of such measures for a period of up to 10 years after the construction or installation and commencement of operation shall be considered remedial action. Activities required to maintain the effectiveness of such measures following such period or the completion of remedial action, whichever is earlier, shall be considered operation or maintenance.

"(7) Limitation on Source Of Funds For O&M.—During any period after the availability of funds received by the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 from tax revenues or appropriations from general revenues, the Federal share of the payment of the cost of operation or maintenance pursuant to paragraph (3)(C)(i) or paragraph (6) of this subsection (relating to operation and maintenance) shall be from funds received by the Hazardous Substance Superfund from amounts recovered on behalf of such fund under this Act.".

(j) Recontracting.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (7):

"(8) Recontracting.—The President is authorized to undertake or continue whatever interim remedial actions the President determines to be appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types, or quantities of hazardous substances not known at the time of entry into the original contract. The total cost of interim actions undertaken at a facility pursuant to this paragraph shall not exceed $2,000,000.".

(k) Siting.—Section 104(c) of CERCLA is amended by adding the following new paragraph after paragraph (8):

"(9) Siting.—Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which—

"(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year

period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,

"(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,

"(C) are acceptable to the President, and

"(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.".

(l) COOPERATIVE AGREEMENTS WITH STATES.—Section 104(d)(1) of CERCLA is amended to read as follows:

"(1) COOPERATIVE AGREEMENTS.—

"(A) STATE APPLICATIONS.—A State or political subdivision thereof or Indian tribe may apply to the President to carry out actions authorized in this section. If the President determines that the State or political subdivision or Indian tribe has the capability to carry out any or all of such actions in accordance with the criteria and priorities established pursuant to section 105(a)(8) and to carry out related enforcement actions, the President may enter into a contract or cooperative agreement with the State or political subdivision or Indian tribe to carry out such actions. The President shall make a determination regarding such an application within 90 days after the President receives the application

"(B) TERMS AND CONDITIONS.—A contract or cooperative agreement under this paragraph shall be subject to such terms and conditions as the President may prescribe. The contract or cooperative agreement may cover a specific facility or specific facilities.

"(C) REIMBURSEMENTS.—Any State which expended funds during the period beginning September 30, 1985, and ending on the date of the enactment of this subparagraph for response actions at any site included on the National Priorities List and subject to a cooperative agreement under this Act shall be reimbursed for the share of costs of such actions for which the Federal Government is responsible under this Act.".

(m) INFORMATION GATHERING AND ACCESS AUTHORITIES.—Section 104(e) of CERCLA is amended by redesignating paragraph (2) as paragraph (7) and aligning the margin of such paragraph with paragraphs (1) through (6) of such subsection, by inserting "CONFIDENTIALITY OF INFORMATION.—" before "(A) Any records", by striking out paragraph (1), and by striking out "(e)" and inserting in lieu thereof the following:

"(e) INFORMATION GATHERING AND ACCESS.—

"(1) ACTION AUTHORIZED.—Any officer, employee, or representative of the President, duly designated by the President, is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location or, in the case of paragraph (3) or (4), at any vessel, facility, establishment, place, property, or location which is adjacent to the vessel, facility, establishment, place, property, or location referred to in such paragraph (3) or (4). Any duly designated officer, employee, or representative of a State or political subdivision under a contract or cooperative agreement under subsection (d)(1) is also authorized to take

such action. The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title.

"*(2) ACCESS TO INFORMATION.—Any officer, employee, or representative described in paragraph (1) may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:*

"*(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.*

"*(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.*

"*(C) Information relating to the ability of a person to pay for or to perform a cleanup.*

In addition, upon reasonable notice, such person either (i) shall grant any such officer, employee, or representative access at all reasonable times to any vessel, facility, establishment, place, property, or location to inspect and copy all documents or records relating to such matters or (ii) shall copy and furnish to the officer, employee, or representative all such documents or records, at the option and expense of such person.

"*(3) ENTRY.—Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:*

"*(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.*

"*(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.*

"*(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.*

"*(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this title.*

"*(4) INSPECTION AND SAMPLES.—*

"*(A) AUTHORITY.—Any officer, employee or representative described in paragraph (1) is authorized to inspect and obtain samples from any vessel, facility, establishment, or other place or property referred to in paragraph (3) or from any location of any suspected hazardous substance or pollutant or contaminant. Any such officer, employee, or representative is authorized to inspect and obtain samples of any containers or labeling for suspected hazardous substances* *or pollutants or contaminants. Each such inspection shall be completed with reasonable promptness.*

"(B) SAMPLES.—If the officer, employee, or representative obtains any samples, before leaving the premises he shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be furnished promptly to the owner, operator, tenant, or other person in charge, if such person can be located.

"(5) COMPLIANCE ORDERS.—

"(A) ISSUANCE.—If consent is not granted regarding any request made by an officer, employee, or representative under paragraph (2), (3), or (4), the President may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

"(B) COMPLIANCE.—The President may ask the Attorney General to commence a civil action to compel compliance with a request or order referred to in subparagraph (A). Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant, the court shall take the following actions:

"(i) In the case of interference with entry or inspection, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or inspection unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

The court may assess a civil penalty not to exceed $25,000 for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraph (2), (3), or (4) or an order issued pursuant to subparagraph (A) of this paragraph.

"(6) OTHER AUTHORITY.—Nothing in this subsection shall preclude the President from securing access or obtaining information in any other lawful manner.".

(n) BASIS FOR WITHHOLDING INFORMATION.—Paragraph (7) of section 104(e) of CERCLA (formerly paragraph (2), as redesignated by subsection (l) of this section) is amended by adding the following new subparagraphs at the end thereof:

"(E) No person required to provide information under this Act may claim that the information is entitled to protection

under this paragraph unless such person shows each of the following:

"(i) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee established under title III of the Amendments and Reauthorization Act of 1986, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

"(ii) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

"(iii) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

"(iv) The specific chemical identity, if sought to be protected, is not readily discoverable through reverse engineering.

"(F) The following information with respect to any hazardous substance at the facility or vessel shall not be entitled to protection under this paragraph:

"(i) The trade name, common name, or generic class or category of the hazardous substance.

"(ii) The physical properties of the substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees celsius.

"(iii) The hazards to health and the environment posed by the substance, including physical hazards (such as explosion) and potential acute and chronic health hazards.

"(iv) The potential routes of human exposure to the substance at the facility, establishment, place, or property being investigated, entered, or inspected under this subsection.

"(v) The location of disposal of any waste stream.

"(vi) Any monitoring data or analysis of monitoring data pertaining to disposal activities.

"(vii) Any hydrogeologic or geologic data.

"(viii) Any groundwater monitoring data.".

(o) ACQUISITION OF PROPERTY.—

(1) IN GENERAL.—Section 104 of CERCLA is amended by adding the following new subsection at the end thereof:

"(j) ACQUISITION OF PROPERTY.—

"(1) AUTHORITY.—The President is authorized to acquire, by purchase, lease, condemnation, donation, or otherwise, any real property or any interest in real property that the President in his discretion determines is needed to conduct a remedial action under this Act. There shall be no cause of action to compel the President to acquire any interest in real property under this Act.

"(2) STATE ASSURANCE.—The President may use the authority of paragraph (1) for a remedial action only if, before an interest in real estate is acquired under this subsection, the State in which the interest to be acquired is located assures the Presi-

dent, through a contract or cooperative agreement or otherwise, that the State will accept transfer of the interest following completion of the remedial action.

"(3) EXEMPTION.—No Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection.".

SEC. 105. NATIONAL CONTINGENCY PLAN.

(a) SUBSECTION (a) OF SECTION 105.—Section 105 of CERCLA is amended as follows:

(1) HEADING.—Insert "(a) REVISION AND REPUBLICATION.—" after "105.".

(2) HAZARD RANKING SYSTEM.—In paragraph (8)(A) insert the following after "ecosystems,": "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release,".

(3) NATIONAL PRIORITY LIST.—In paragraph (8)(B):

(A) Strike out "at least four hundred of".

(B) Strike out "facilities at least" and insert in lieu thereof "facilities".

(C) Insert after "in such State." the following: "A State shall be allowed to designate its highest priority facility only once.".

(4) CONFORMING AMENDMENT.—In paragraph (9) insert after "therefor" the following: "and including consideration of minority firms in accordance with subsection (f)".

(5) STANDARDS AND PROCEDURES FOR INNOVATIVE TREATMENT TECHNOLOGIES.—Strike out "and" at the end of paragraph (8), strike out the period at the end of paragraph (9) and insert in lieu thereof "; and", and insert after paragraph (9) the following new paragraph:

"(10) standards and testing procedures by which alternative or innovative treatment technologies can be determined to be appropriate for utilization in response actions authorized by this Act.".

(b) NEW SUBSECTIONS.—Section 105 of CERCLA is amended by adding the following new subsections at the end thereof:

"(b) REVISION OF PLAN.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall revise the National Contingency Plan to reflect the requirements of such amendments. The portion of such Plan known as 'the National Hazardous Substance Response Plan' shall be revised to provide procedures and standards for remedial actions undertaken pursuant to this Act which are consistent with amendments made by the Superfund Amendments and Reauthorization Act of 1986 relating to the selection of remedial action.

"(c) HAZARD RANKING SYSTEM.—

"(1) REVISION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986 and after publication of notice and opportunity for submission of comments in accordance with section 553 of title 5, United States Code, the President shall by rule promulgate amend-

ments to the hazard ranking system in effect on September 1, 1984. Such amendments shall assure, to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. The President shall establish an effective date for the amended hazard ranking system which is not later than 24 months after enactment of the Superfund Amendments and Reauthorization Act of 1986. Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984, shall continue in full force and effect.

"(2) HEALTH ASSESSMENT OF WATER CONTAMINATION RISKS.—In carrying out this subsection, the President shall ensure that the human health risks associated with the contamination or potential contamination (either directly or as a result of the runoff of any hazardous substance or pollutant or contaminant from sites or facilities) of surface water are appropriately assessed where such surface water is, or can be, used for recreation or potable water consumption. In making the assessment required pursuant to the preceding sentence, the President shall take into account the potential migration of any hazardous substance or pollutant or contaminant through such surface water to downstream sources of drinking water.

"(3) REEVALUATION NOT REQUIRED.—The President shall not be required to reevaluate, after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, the hazard ranking of any facility which was evaluated in accordance with the criteria under this section before the effective date of the amendments to the hazard ranking system under this subsection and which was assigned a national priority under the National Contingency Plan.

"(4) NEW INFORMATION.—Nothing in paragraph (3) shall preclude the President from taking new information into account in undertaking response actions under this Act.

"(d) PETITION FOR ASSESSMENT OF RELEASE.—Any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release. If the President has not previously conducted a preliminary assessment of such release, the President shall, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate. If the preliminary assessment indicates that the release or threatened release concerned may pose a threat to human health or the environment, the President shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in paragraph (8)(A) of subsection (a) to determine the national priority of such release or threatened release.

"(e) RELEASES FROM EARLIER SITES.—Whenever there has been, after January 1, 1985, a significant release of hazardous substances

or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List (revised edition, December 1984) the site shall be restored to the National Priorities List, without application of the hazard ranking system.

"(f) MINORITY CONTRACTORS.—In awarding contracts under this Act, the President shall consider the availability of qualified minority firms. The President shall describe, as part of any annual report submitted to the Congress under this Act, the participation of minority firms in contracts carried out under this Act. Such report shall contain a brief description of the contracts which have been awarded to minority firms under this Act and of the efforts made by the President to encourage the participation of such firms in programs carried out under this Act.

"(g) SPECIAL STUDY WASTES.—

"(1) APPLICATION—This subsection applies to facilities—

"(A) which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 were not included on, or proposed for inclusion on, the National Priorities List; and

"(B) at which special study wastes described in paragraph (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities, including any such facility from which there has been a release of a special study waste.

"(2) CONSIDERATIONS IN ADDING FACILITIES TO NPL.—Pending revision of the hazard ranking system under subsection (c), the President shall consider each of the following factors in adding facilities covered by this section to the National Priorities List:

"(A) The extent to which hazard ranking system score for the facility is affected by the presence of any special study waste at, or any release from, such facility.

"(B) Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from such facility, the extent of or potential for release of such hazardous constituents, the exposure or potential exposure to human population and the environment, and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at such facility. This subparagraph refers only to available information on actual concentrations of hazardous substances and not on the total quantity of special study waste at such facility.

"(3) SAVINGS PROVISIONS.—Nothing in this subsection shall be construed to limit the authority of the President to remove any facility which as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986 is included on the National Priorities List from such List, or not to list any facility which as of such date is proposed for inclusion on such list.

"(4) INFORMATION GATHERING AND ANALYSIS.—Nothing in this Act shall be construed to preclude the expenditure of monies from the Fund for gathering and analysis of informa-

tion which will enable the President to consider the specific factors required by paragraph (2).".

SEC. 106. REIMBURSEMENT.

Section 106(b) of CERCLA is amended as follows:

(1) Insert "(1)" after "(b)".

(2) Strike out "who willfully" and insert "who, without sufficient cause, willfully".

(3) Add at the end thereof the following new paragraph:

"(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954.

"(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

"(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 107(a) and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

"(D) A petitioner who is liable for response costs under section 107(a) may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

"(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28 of the United States Code.".

SEC. 107. LIABILITY.

(a) FOREIGN VESSELS.—Section 107(a)(1) of CERCLA is amended by striking out "(otherwise subject to the jurisdiction of the United States)".

(b) RECOVERABLE COSTS AND DAMAGES.—Section 107(a) of CERCLA is amended by striking out "and" at the end of subparagraph (B), striking out the period at the end of subparagraph (C) and inserting "; and" and inserting at the end thereof the following:

"(D) the costs of any health assessment or health effects study carried out under section 104(i).

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term 'comparable maturity' shall be determined with reference to the date on which interest accruing under this subsection commences.".

(c) RENDERING CARE OR ADVICE; EMERGENCY RESPONSE ACTIONS.—Section 107(d) of CERCLA is amended to read as follows:

"(d) RENDERING CARE OR ADVICE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no person shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ('NCP') or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

"(2) STATE AND LOCAL GOVERNMENTS.—No State or local government shall be liable under this title for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

"(3) SAVINGS PROVISION.—This subsection shall not alter the liability of any person covered by the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section with respect to the release or threatened release concerned.".

(d) NATURAL RESOURCES.—

(1) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—Section 107(f) of CERCLA is amended by inserting "(1) NATURAL RESOURCES LIABILITY.—" after "(f)" and by adding at the end thereof the following new paragraphs:

"(2) DESIGNATION OF FEDERAL AND STATE OFFICIALS.—

"(A) FEDERAL.—The President shall designate in the National Contingency Plan published under section 105 of this Act the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act

and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

"(B) STATE.—The Governor of each State shall designate State officials who may act on behalf of the public as trustees for natural resources under this Act and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act and such section 311 for those natural resources under their trusteeship.

"(C) REBUTTABLE PRESUMPTION.—Any determination or assessment of damages to natural resources for the purposes of this Act and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 301(c) of this Act shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Federal Water Pollution Control Act.".

(2) USE OF RECOVERED FUNDS.—Section 107(f)(1) of CERCLA (as designated by paragraph (1) of this subsection) is amended by striking out the third sentence and inserting in lieu thereof the following: "Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource".

(3) DEADLINE FOR SECTION 301 REGULATIONS.—Section 301(c)(1) of CERCLA is amended by adding the following at the end thereof: "Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(e) FEDERAL AGENCIES.—Section 107(g) of CERCLA is amended to read as follows:

"(g) FEDERAL AGENCIES.—For provisions relating to Federal agencies, see section 120 of this Act."

(f) FEDERAL LIEN.—Section 107 of CERCLA is amended by adding at the end thereof the following new subsection:

"(l) FEDERAL LIEN.—

"(1) IN GENERAL.—All costs and damages for which a person is liable to the United States under subsection (a) of this section

(other than the owner or operator of a vessel under paragraph (1) of subsection (a)) shall constitute a lien in favor of the United States upon all real property and rights to such property which—

"(A) belong to such person; and

"(B) are subject to or affected by a removal or remedial action.

"(2) Duration.—The lien imposed by this subsection shall arise at the later of the following:

"(A) The time costs are first incurred by the United States with respect to a response action under this Act.

"(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

Such lien shall continue until the liability for the costs (or a judgment against the person arising out of such liability) is satisfied or becomes unenforceable through operation of the statute of limitations provided in section 113.

"(3) Notice and validity.—The lien imposed by this subsection shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected under applicable State law before notice of the lien has been filed in the appropriate office within the State (or county or other governmental subdivision), as designated by State law, in which the real property subject to the lien is located. Any such purchaser, holder of a security interest, or judgment lien creditor shall be afforded the same protections against the lien imposed by this subsection as are afforded under State law against a judgment lien which arises out of an unsecured obligation and which arises as of the time of the filing of the notice of the lien imposed by this subsection. If the State has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States district court for the district in which the real property is located. For purposes of this subsection, the terms 'purchaser' and 'security interest' shall have the definitions provided under section 6323(h) of the Internal Revenue Code of 1954.

"(4) Action in rem.—The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred. Nothing in this subsection shall affect the right of the United States to bring an action against any person to recover all costs and damages for which such person is liable under subsection (a) of this section.

"(m) Maritime Lien.—All costs and damages for which the owner or operator of a vessel is liable under subsection (a)(1) with respect to a release or threatened release from such vessel shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in the district court of the United States for the district in which the vessel may be found. Nothing in this subsection shall affect the right of the United States to bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.".

SEC. 108. FINANCIAL RESPONSIBILITY.

(a) EVIDENCE OF FINANCIAL RESPONSIBILITY.—Section 108(b)(2) of CERCLA is amended by adding the following at the end thereof: "Financial responsibility may be established by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.".

(b) PHASE-IN PERIOD.—Section 108(b)(3) of CERCLA is amended by striking out "over a period of not less than three and no more than six years" and inserting in lieu thereof "as quickly as can reasonably be achieved but in no event more than 4 years".

(c) DIRECT ACTION; LIABILITY.—Subsections (c) and (d) of section 108 of CERCLA are amended to read as follows:

"(c) DIRECT ACTION.—

"(1) RELEASES FROM VESSELS.—In the case of a release or threatened release from a vessel, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such vessel under subsection (a). In defending such a claim, the guarantor may invoke all rights and defenses which would be available to the owner or operator under this title. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that the guarantor might have been entitled to invoke in a proceeding brought by the owner or operator against him.

"(2) RELEASES FROM FACILITIES.—In the case of a release or threatened release from a facility, any claim authorized by section 107 or 111 may be asserted directly against any guarantor providing evidence of financial responsibility for such facility under subsection (b), if the person liable under section 107 is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a person liable under section 107 who is likely to be solvent at the time of judgment. In the case of any action pursuant to this paragraph, the guarantor shall be entitled to invoke all rights and defenses which would have been available to the person liable under section 107 if any action had been brought against such person by the claimant and all rights and defenses which would have been available to the guarantor if an action had been brought against the guarantor by such person.

"(d) LIMITATION OF GUARANTOR LIABILITY.—

"(1) TOTAL LIABILITY.—The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

"(2) OTHER LIABILITY.—Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 107 of this Act or other applicable law.".

SEC. 109. PENALTIES.

(a) VIOLATIONS AND CRIMINAL PENALTIES.—

(1) NOTICE.—Section 103(b) of CERCLA is amended as follows:

(A) Insert after "knowledge of such release" the following: "or who submits in such a notification any information which he knows to be false or misleading".

(B) Strike out "not more than $10,000 or imprisoned for not more than one year, or both" and insert in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(2) DESTRUCTION OF RECORDS.—Section 103(d)(2) of CERCLA is amended by striking out "not more than $20,000, or imprisoned for not more than one year or both." and inserting in lieu thereof "in accordance with the applicable provisions of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both.".

(3) FALSE INFORMATION.—Section 112(b)(1) of CERCLA is amended by striking out "up to $5,000 or imprisoned for not more than one year, or both" and inserting in lieu thereof "in accordance with the applicable provisions of of title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both".

(b) SECTION 106 PENALTY.—Section 106(b) of CERCLA is amended by striking out "$5,000" and inserting in lieu thereof "$25,000".

(c) CIVIL PENALTIES AND AWARDS.—Section 109 of CERCLA is amended to read as follows:

"SEC. 109. CIVIL PENALTIES AND AWARDS.

"(a) CLASS I ADMINISTRATIVE PENALTY.—

"(1) VIOLATIONS.—A civil penalty of not more than $25,000 per violation may be assessed by the President in the case of any of the following—

"(A) A violation of the requirements of section 103(a) or (b) (relating to notice).

"(B) A violation of the requirements of section 103(d)(2) (relating to destruction of records, etc.).

"(C) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(D) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(E) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

"(2) NOTICE AND HEARINGS.—No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

"(3) DETERMINING AMOUNT.—In determining the amount of any penalty assessed pursuant to this subsection, the President shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

"(4) REVIEW.—Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the President. The President shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the President may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

"(5) SUBPOENAS.—The President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the President in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for hearing on the record in accordance with section 554 of title 5 of the United States Code. In any proceeding for the assessment of a civil penalty under this subsection the President may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(c) JUDICIAL ASSESSMENT.—The President may bring an action in the United States district court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation (or failure or refusal) continues in the case of any of the following—

"(1) A violation of the notice requirements of section 103(a) or (b).

"(2) A violation of section 103(d)(2) (relating to destruction of records, etc.).

"(3) A violation of the requirements of section 108 (relating to financial responsibility, etc.), the regulations issued under section 108, or with any denial or detention order under section 108.

"(4) A violation of an order under section 122(d)(3) (relating to settlement agreements for action under section 104(b)).

"(5) Any failure or refusal referred to in section 122(l) (relating to violations of administrative orders, consent decrees, or agreements under section 120).

In the case of a second or subsequent violation (or failure or refusal), the amount of such penalty may be not more than $75,000 for each day during which the violation (or failure or refusal) continues. For additional provisions providing for judicial assessment of *civil penalties for failure to comply with a request or order under section 104(e) (relating to information gathering and access authorities), see section 104(e).*

"(d) Awards.—The President may pay an award of up to $10,000 to any individual who provides information leading to the arrest and conviction of any person for a violation subject to a criminal penalty under this Act, including any violation of section 103 and any other violation referred to in this section. The President shall, by regulation, prescribe criteria for such an award and may pay any award under this subsection from the Fund, as provided in section 111.

"(e) Procurement Procedures—Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

"(f) Savings Clause.—Action taken by the President pursuant to this section shall not affect or limit the President's authority to enforce any provisions of this Act.".

SEC. 110. HEALTH-RELATED AUTHORITIES.

Section 104(i) of CERCLA is amended as follows:

(1) Insert "(1)" after "(i)" and redesignate paragraphs (1), (2), (3), (4), and (5) as subparagraphs (A), (B), (C), (D), and (E).

(2) In paragraph (1), strike "and" after "Health Administration," and insert after "Social Security Administration," the following: "the Secretary of Transportation, and appropriate State and local health officials,".

(3) Insert after "chromosomal testing" in subparagraph (D)(as redesignated by paragraph (1) of this subsection) the following: "where appropriate".

(4) Add the following new paragraphs at the end thereof:

"(2)(A) Within 6 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of the Agency for Toxic Substances and Disease Registry (ATSDR) and the Administrator of the Environmental Protection Agency ("EPA") shall prepare a list, in order of priority, of at least 100 hazardous substances which are most commonly found at facilities on the National Priorities List and which, in their sole discretion, they determine are posing the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at facilities on the National Priorities List or at facilities to which a response to a release or a threatened release under this section is under consideration.

"(B) Within 24 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of ATSDR and the Administrator of EPA shall revise the list prepared

under subparagraph (A). Such revision shall include, in order of priority, the addition of 100 or more such hazardous substances. In each of the 3 consecutive 12-month periods that follow, the Administrator of ATSDR and the Administrator of EPA shall revise, in the same manner as provided in the 2 preceding sentences, such list to include not fewer than 25 additional hazardous substances per revision. The Administrator of ATSDR and the Administrator of EPA shall not less often than once every year thereafter revise such list to include additional hazardous substances in accordance with the criteria in subparagraph (A).

"(3) Based on all available information, including information maintained under paragraph (1)(B) and data developed and collected on the health effects of hazardous substances under this paragraph, the Administrator of ATSDR shall prepare toxicological profiles of each of the substances listed pursuant to paragraph (2). The toxicological profiles shall be prepared in accordance with guidelines developed by the Administrator of ATSDR and the Administrator of EPA. Such profiles shall include, but not be limited to each of the following:

> *"(A) An examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.*
>
> *"(B) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.*
>
> *"(C) Where appropriate, an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.*

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been peer reviewed. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

"(4) The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. Such consultations to individuals may be provided by States under cooperative agreements established under this Act.

"(5)(A) For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance. Where feasible, such program shall seek to develop methods to determine the health effects of such substance in combination with other substances with which it is commonly found. Before assuring the initiation of such program, the Administrator of ATSDR shall consider recommendations of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act on the types of research that should be done. Such program shall include, to the extent necessary to supplement existing information, but shall not be limited to—

"(i) laboratory and other studies to determine short, intermediate, and long-term health effects;

"(ii) laboratory and other studies to determine organ-specific, site-specific, and system-specific acute and chronic toxicity;

"(iii) laboratory and other studies to determine the manner in which such substances are metabolized or to otherwise develop an understanding of the biokinetics of such substances; and

"(iv) where there is a possibility of obtaining human data, the collection of such information.

"(B) In assessing the need to perform laboratory and other studies, as required by subparagraph (A), the Administrator of ATSDR shall consider—

"(i) the availability and quality of existing test data concerning the substance on the suspected health effect in question;

"(ii) the extent to which testing already in progress will, in a timely fashion, provide data that will be adequate to support the preparation of toxicological profiles as required by paragraph (3); and

"(iii) such other scientific and technical factors as the Administrator of ATSDR may determine are necessary for the effective implementation of this subsection.

"(C) In the development and implementation of any research program under this paragraph, the Administrator of ATSDR and the Administrator of EPA shall coordinate such research program implemented under this paragraph with the National Toxicology Program and with programs of toxicological testing established under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act. The purpose of such coordination shall be to avoid duplication of effort and to assure that the hazardous substances listed pursuant to this subsection are tested thoroughly at the earliest practicable date. Where appropriate, consistent with such purpose, a research program under this paragraph may be carried out using such programs of toxicological testing.

"(D) It is the sense of the Congress that the costs of research programs under this paragraph be borne by the manufacturers and

processors of the hazardous substance in question, as required in programs of toxicological testing under the Toxic Substances Control Act. Within 1 year after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator of EPA shall promulgate regulations which provide, where appropriate, for payment of such costs by manufacturers and processors under the Toxic Substances Control Act, and registrants under the Federal Insecticide, Fungicide, and Rodenticide Act, and recovery of such costs from responsible parties under this Act.

"(6)(A) The Administrator of ATSDR shall perform a health assessment for each facility on the National Priorities List established under section 105. Such health assessment shall be completed not later than December 10, 1988, for each facility proposed for inclusion on such list prior to the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986 or not later than one year after the date of proposal for inclusion on such list for each facility proposed for inclusion on such list after such date of enactment.

"(B) The Administrator of ATSDR may perform health assessments for releases or facilities where individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, for which the probable source of such exposure is a release. In addition to other methods (formal or informal) of providing such information, such individual persons or licensed physicians may submit a petition to the Administrator of ATSDR providing such information and requesting a health assessment. If such a petition is submitted and the Administrator of ATSDR does not initiate a health assessment, the Administrator of ATSDR shall provide a written explanation of why a health assessment is not appropriate.

"(C) In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments under this subsection, the Administrator of ATSDR shall consider the National Priorities List schedules and the needs of the Environmental Protection Agency and other Federal agencies pursuant to schedules for remedial investigation and feasibility studies.

"(D) Where a health assessment is done at a site on the National Priorities List, the Administrator of ATSDR shall complete such assessment promptly and, to the maximum extent practicable, before the completion of the remedial investigation and feasibility study at the facility concerned.

"(E) Any State or political subdivision carrying out a health assessment for a facility shall report the results of the assessment to the Administrator of ATSDR and the Administrator of EPA and shall include recommendations with respect to further activities which need to be carried out under this section. The Administrator

of ATSDR shall state such recommendation in any report on the results of any assessment carried out directly by the Administrator of ATSDR for such facility and shall issue periodic reports which include the results of all the assessments carried out under this subsection.

"(F) For the purposes of this subsection and section 111(c)(4), the term 'health assessments' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

"(G) The purpose of health assessments under this subsection shall be to assist in determining whether actions under paragraph (11) of this subsection should be taken to reduce human exposure to hazardous substances from a facility and whether additional information on human exposure and associated health risks is needed and should be acquired by conducting epidemiological studies under paragraph (7), establishing a registry under paragraph (8), establishing a health surveillance program under paragraph (9), or through other means. In using the results of health assessments for determining additional actions to be taken under this section, the Administrator of ATSDR may consider additional information on the risks to the potentially affected population from all sources of such hazardous substances including known point or nonpoint sources other than those from the facility in question.

"(H) At the completion of each health assessment, the Administrator of ATSDR shall provide the Administrator of EPA and each affected State with the results of such assessment, together with any recommendations for further actions under this subsection or otherwise under this Act. In addition, if the health assessment indicates that the release or threatened release concerned may pose a serious threat to human health or the environment, the Administrator of ATSDR shall so notify the Administrator of EPA who shall promptly evaluate such release or threatened release in accordance with the hazard ranking system referred to in section 105(a)(8)(A) to determine whether the site shall be placed on the National Priorities List or, if the site is already on the list, the Administrator of ATSDR may recommend to the Administrator of EPA that the site be accorded a higher priority.

"(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to deter-

mine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

"(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the peer review group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

"(8) In any case in which the results of a health assessment indicate a potential significant risk to human health, the Administrator of ATSDR shall consider whether the establishment of a registry of exposed persons would contribute to accomplishing the purposes of this subsection, taking into account circumstances bearing on the usefulness of such a registry, including the seriousness or unique character of identified diseases or the likelihood of population migration from the affected area.

"(9) Where the Administrator of ATSDR has determined that there is a significant increased risk of adverse health effects in humans from exposure to hazardous substances based on the results of a health assessment conducted under paragraph (6), an epidemiologic study conducted under paragraph (7), or an exposure registry that has been established under paragraph (8), and the Administrator of ATSDR has determined that such exposure is the result of a release from a facility, the Administrator of ATSDR shall initiate a health surveillance program for such population. This program shall include but not be limited to—

"(A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and

"(B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

"(10) Two years after the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986, and every 2 years thereafter, the Administrator of ATSDR shall prepare and submit to the Administrator of EPA and to the Congress a report on the results of the activities of ATSDR regarding—

"(A) health assessments and pilot health effects studies conducted;

"(B) epidemiologic studies conducted;

"(C) hazardous substances which have been listed under paragraph (2), toxicological profiles which have been developed, and toxicologic testing which has been conducted or which is being conducted under this subsection;

"(D) registries established under paragraph (8); and

"(E) an overall assessment, based on the results of activities conducted by the Administrator of ATSDR, of the linkage between human exposure to individual or combinations of haz-

ardous substances due to releases from facilities covered by this Act or the Solid Waste Disposal Act and any increased incidence or prevalence of adverse health effects in humans.

"(11) If a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human health, the President shall take such steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health. Such steps may include the use of any authority under this Act, including, but not limited to—

"(A) provision of alternative water supplies, and

"(B) permanent or temporary relocation of individuals.

In any case in which information is insufficient, in the judgment of the Administrator of ATSDR or the President to determine a significant human exposure level with respect to a hazardous substance, the President may take such steps as may be necessary to reduce the exposure of any person to such hazardous substance to such level as the President deems necessary to protect human health.

"(12) In any case which is the subject of a petition, a health assessment or study, or a research program under this subsection, nothing in this subsection shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority vested in the President, the Administrator of ATSDR or the Administrator of EPA under any other provision of law (including, but not limited to, the imminent hazard authority of section 7003 of the Solid Waste Disposal Act) or the response and abatement authorities of this Act.

"(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate peer review. Such peer review shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such peer review may be conducted by the Board of Scientific Counselors. In the case of other research, such peer review shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.

"(14) In the implementation of this subsection and other health-related authorities of this Act, the Administrator of ATSDR shall assemble, develop as necessary, and distribute to the States, and upon request to medical colleges, physicians, and other health professionals, appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances (giving priority to those listed in paragraph (2)), through such means as the Administrator of ATSDR deems appropriate.

"(15) The activities of the Administrator of ATSDR described in this subsection and section 111(c)(4) shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities. Such activities shall include provision of consultations on health information, the conduct of health assessments, including those required under section 3019(b) of the Solid Waste Disposal Act, health studies, registries, and health surveillance.

"(16) The President shall provide adequate personnel for ATSDR, which shall not be fewer than 100 employees. For purposes of determining the number of employees under this subsection, an employee employed by ATSDR on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

"(17) In accordance with section 120 (relating to Federal facilities), the Administrator of ATSDR shall have the same authorities under this section with respect to facilities owned or operated by a department, agency, or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

"(18) If the Administrator of ATSDR determines that it is appropriate for purposes of this section to treat a pollutant or contaminant as a hazardous substance, such pollutant or contaminant shall be treated as a hazardous substance for such purpose.".

SEC. 111. USES OF FUND.

(a) AMOUNT OF FUND.—Section 111 of CERCLA is amended by inserting after "(a)" the following: "IN GENERAL.—For the purposes specified in this section there is authorized to be appropriated from the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986 not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and such sums shall remain available until expended. The preceding sentence constitutes a specific authorization for the funds appropriated under title II of Public Law 99-160 (relating to payment to the Hazardous Substances Trust Fund).".

(b) USES OF FUNDS UNDER SECTION 111(a).—Section 111(a) of CERCLA is amended by striking out "; and" at the end of paragraph (3) and inserting a period, by striking out the semicolons at the end of paragraphs (1) and (2) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1) through (4), and by adding at the end thereof the following:

> *"(5) GRANTS FOR TECHNICAL ASSISTANCE.—The cost of grants under section 117(e) (relating to public participation grants for technical assistance).*
>
> *"(6) LEAD CONTAMINATED SOIL.—Payment of not to exceed $15,000,000 for the costs of a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil in one to three different metropolitan areas.".*

(c) NATURAL RESOURCE DAMAGE CLAIMS.—

(1) Limitation.—Section 111(b) of CERCLA is amended by inserting "(1) In General.—" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) Limitation on payment of natural resource claims.—

"(A) General requirements.—No natural resource claim may be paid from the Fund unless the President determines that the claimant has exhausted all administrative and judicial remedies to recover the amount of such claim from persons who may be liable under section 107.

"(B) Definition.—As used in this paragraph, the term 'natural resource claim' means any claim for injury to, or destruction or loss of, natural resources. The term does not include any claim for the costs of natural resource damage assessment.".

(2) Conforming amendment.—Section 111(h) of CERCLA is repealed.

(d) Subsection (c) Amendments.—

(1) Section 111(c)(4).—Section 111(c)(4) of CERCLA is amended by striking out "the costs of epidemiologic studies" and inserting "Any costs incurred in accordance with subsection (m) of this section (relating to ATSDR) and section 104(i), including the costs of epidemiologic and laboratory studies, health assessments, preparation of toxicologic profiles".

(2) New paragraphs in section 111(c).—Section 111(c) of CERCLA is amended by striking out "; and" at the end of paragraph (5) and inserting a period, by striking out the semicolons at the end of paragraphs (1) through (4) and inserting in lieu thereof a period, by capitalizing the first letter in paragraphs (1), (2), (3), (5), and (6), and by adding at the end thereof the following:

"(7) Evaluation costs under petition provisions of section 105(d).—Costs incurred by the President in evaluating facilities pursuant to petitions under section 105(d) (relating to petitions for assessment of release).

"(8) Contract costs under section 104(a)(1).—The costs of contracts or arrangements entered into under section 104(a)(1) to oversee and review the conduct of remedial investigations and feasibility studies undertaken by persons other than the President and the costs of appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements.

"(9) Acquisition costs under section 104(j).—The costs incurred by the President in acquiring real estate or interests in real estate under section 104(j) (relating to acquisition of property).

"(10) Research, development, and demonstration costs under section 311.—The cost of carrying out section 311 (relating to research, development, and demonstration), except that the amounts available for such purposes shall not exceed the amounts specified in subsection (n) of this section.

"(11) Local government reimbursement.—Reimbursements to local governments under section 123, except that during the 5-fiscal-year period beginning October 1, 1986, not more than 0.1

percent of the total amount appropriated from the Fund may be used for such reimbursements.

"(12) WORKER TRAINING AND EDUCATION GRANTS.—The costs of grants under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 for training and education of workers to the extent that such costs do not exceed $10,000,000 for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.

"(13) AWARDS UNDER SECTION 109.—The costs of any awards granted under section 109(d).

"(14) LEAD POISONING STUDY.—The cost of carrying out the study under subsection (f) of section 118 of the Superfund Amendments and Reauthorization Act of 1986 (relating to lead poisoning in children).".

(e) LIMITATION ON CERTAIN CLAIMS.—Section 111(e)(2) of CERCLA is amended by adding at the end the following: "No money in the Fund may be used for the payment of any claim under subsection (a)(3) or subsection (b) of this section in any fiscal year for which the President determines that all of the Fund is needed for response to threats to public health from releases or threatened releases of hazardous substances.".

(f) FUND USE OUTSIDE FEDERAL PROPERTY BOUNDARIES.—Section 111(e)(3) of CERCLA is amended by inserting the following before the period: "; except that money in the Fund shall be available for the provision of alternative water supplies (including the reimbursement of costs incurred by a municipality) in any case involving groundwater contamination outside the boundaries of a federally owned facility in which the federally owned facility is not the only potentially responsible party".

(g) INSPECTOR GENERAL.—Section 111(k) of CERCLA is amended to read as follows:

"(k) INSPECTOR GENERAL.—In each fiscal year, the Inspector General of each department, agency, or instrumentality of the United States which is carrying out any authority of this Act shall conduct an annual audit of all payments, obligations, reimbursements, or other uses of the Fund in the prior fiscal year, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The audit shall include an examination of a sample of agreements with States (in accordance with the provisions of the Single Audit Act) carrying out response actions under this title and an examination of remedial investigations and feasibility studies prepared for remedial actions. The Inspector General shall submit to the Congress an annual report regarding the audit report required under this subsection. The report shall contain such recommendations as the Inspector General deems appropriate. Each department, agency, or instrumentality of the United States shall cooperate with its inspector general in carrying out this subsection.".

(h) NEW SUBSECTIONS.—Section 111 of CERCLA is amended by adding after subsection (l) the following new subsections:

"(m) AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—There shall be directly available to the Agency for Toxic Substances and Disease Registry to be used for the purpose of carrying out activities described in subsection (c)(4) and section 104(i) not less than $50,000,000 per fiscal year for each of fiscal years 1987 and 1988,

not less than $55,000,000 for fiscal year 1989, and not less than $60,000,000 per fiscal year for each of fiscal years 1990 and 1991. Any funds so made available which are not obligated by the end of the fiscal year in which made available shall be returned to the Fund.

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM.—

"(1) SECTION 311(b).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) (relating to research, development, and demonstration) other than basic research. Such amounts shall remain available until expended.

"(2) SECTION 311(a).—From the amounts available in the Fund, not more than the following amounts may be used for the purposes of section 311(a) (relating to hazardous substance research, demonstration, and training activities):

"(A) For the fiscal year 1987, $3,000,000.
"(B) For the fiscal year 1988, $10,000,000.
"(C) For the fiscal year 1989, $20,000,000.
"(D) For the fiscal year 1990, $30,000,000.
"(E) For the fiscal year 1991, $35,000,000.

No more than 10 percent of such amounts shall be used for training under section 311(a) in any fiscal year.

"(3) SECTION 311(d).—For each of the fiscal years 1987, 1988, 1989, 1990, and 1991, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d) (relating to university hazardous substance research centers).

"(o) NOTIFICATION PROCEDURES FOR LIMITATIONS ON CERTAIN PAYMENTS.—Not later than 90 days after the enactment of this subsection, the President shall develop and implement procedures to adequately notify, as soon as practicable after a site is included on the National Priorities List, concerned local and State officials and other concerned persons of the limitations, set forth in subsection (a)(2) of this section, on the payment of claims for necessary response costs incurred with respect to such site.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 111 of CERCLA is amended by adding the following subsection after subsection (o):

"(p) GENERAL REVENUE SHARE OF SUPERFUND.—

"(1) IN GENERAL.—The following sums are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund:

"(A) For fiscal year 1987, $212,500,000.
"(B) For fiscal year 1988, $212,500,000.
"(C) For fiscal year 1989, $212,500,000.
"(D) For fiscal year 1990, $212,500,000.
"(E) For fiscal year 1991, $212,500,000.

In addition there is authorized to be appropriated to the Hazardous Substance Superfund for each fiscal year an amount equal to so much of the aggregate amount authorized to be ap-

propriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980) as has not been appropriated before the beginning of the fiscal year involved.

"(2) COMPUTATION.—The amounts authorized to be appropriated under paragraph (1) of this subsection in a given fiscal year shall be available only to the extent that such amount exceeds the amount determined by the Secretary under section 9507(b)(2) of the Internal Revenue Code of 1986 for the prior fiscal year.".

SEC. 112. CLAIMS PROCEDURE.

(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—Section 112(a) of CERCLA is amended to read as follows:

"(a) CLAIMS AGAINST THE FUND FOR RESPONSE COSTS.—No claim may be asserted against the Fund pursuant to section 111(a) unless such claim is presented in the first instance to the owner, operator, or guarantor of the vessel or facility from which a hazardous substance has been released, if known to the claimant, and to any other person known to the claimant who may be liable under section 107. In any case where the claim has not been satisfied within 60 days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.".

(b) PROCEDURES.—Section 112(b) is amended by striking "(b)(1)" and inserting "(b)(1) PRESCRIBING FORMS AND PROCEDURES.—" and by striking paragraphs (2), (3), and (4) and inserting the following:

"(2) PAYMENT OR REQUEST FOR HEARING.—The President may, if satisfied that the information developed during the processing of the claim warrants it, make and pay an award of the claim, except that no claim may be awarded to the extent that a judicial judgment has been made on the costs that are the subject of the claim. If the President declines to pay all or part of the claim, the claimant may, within 30 days after receiving notice of the President's decision, request an administrative hearing.

"(3) BURDEN OF PROOF.—In any proceeding under this subsection, the claimant shall bear the burden of proving his claim.

"(4) DECISIONS.—All administrative decisions made hereunder shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to an administrative law judge, unless all the parties to the claim agree in writing to an extension or unless the President, in his discretion, extends the time limit for a period not to exceed sixty days.

"(5) FINALITY AND APPEAL.—All administrative decisions hereunder shall be final, and any party to the proceeding may appeal a decision within 30 days of notification of the award or decision. Any such appeal shall be made to the Federal district court for the district where the release or threat of release took place. In any such appeal, the decision shall be considered binding and conclusive, and shall not be overturned except for arbitrary or capricious abuse of discretion.

"(6) Payment.—Within 20 days after the expiration of the appeal period for any administrative decision concerning an award, or within 20 days after the final judicial determination of any appeal taken pursuant to this subsection, the President shall pay any such award from the Fund. The President shall determine the method, terms, and time of payment.".

(c) Statute of Limitations.—Section 112(d) of CERCLA is amended to read as follows:

"(d) Statute of Limitations.—

"(1) Claims for recovery of costs.—No claim may be presented under this section for recovery of the costs referred to in section 107(a) after the date 6 years after the date of completion of all response action.

"(2) Claims for recovery of damages.—No claim may be presented under this section for recovery of the damages referred to in section 107(a) unless the claim is presented within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which final regulations are promulgated under section 301(c).

"(3) Minors and incompetents.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

"(B) against an incompetent person until the earlier of the date on which such person's incompetency ends or the date on which a legal representative is duly appointed for such incompetent person.".

(d) Double Recovery Prohibited.— Section 112 of CERCLA is amended by adding the following new subsection at the end thereof:

"(f) Double Recovery Prohibited.—Where the President has paid out of the Fund for any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs.".

SEC. 113. LITIGATION, JURISDICTION, AND VENUE.

(a) Nationwide Service of Process.—Section 113 of CERCLA is amended by adding the following new subsection at the end thereof:

"(e) Nationwide Service of Process.—In any action by the United States under this Act, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.".

(b) Contribution; Statute of Limitations.—Section 113 of CERCLA is amended by adding the following new subsections after subsection (e):

"(f) Contribution.—

"(1) Contribution.—Any person may seek contribution from any other person who is liable or potentially liable under section 107(a), during or following any civil action under section 106 or under section 107(a). Such claims shall be brought in accordance with this section and the Federal Rules of Civil Procedure, and shall be governed by Federal law. In resolving contri-

bution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subsection shall diminish the right of any person to bring an action for contribution in the absence of a civil action under section 106 or section 107.

"(2) SETTLEMENT.—A person who has resolved its liability to the United States or a State in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(3) PERSONS NOT PARTY TO SETTLEMENT.—(A) If the United States or a State has obtained less than complete relief from a person who has resolved its liability to the United States or the State in an administrative or judicially approved settlement, the United States or the State may bring an action against any person who has not so resolved its liability.

"(B) A person who has resolved its liability to the United States or a State for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (2).

"(C) In any action under this paragraph, the rights of any person who has resolved its liability to the United States or a State shall be subordinate to the rights of the United States or the State. Any contribution action brought under this paragraph shall be governed by Federal law.

"(g) PERIOD IN WHICH ACTION MAY BE BROUGHT.—

"(1) ACTIONS FOR NATURAL RESOURCE DAMAGES.—Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within 3 years after the later of the following:

"(A) The date of the discovery of the loss and its connection with the release in question.

"(B) The date on which regulations are promulgated under section 301(c).

With respect to any facility listed on the National Priorities List ('NPL'), any Federal facility identified under section 120 (relating to Federal facilities), or any vessel or facility at which a remedial action under this Act is otherwise scheduled, an action for damages under this Act must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance activities) in lieu of the dates referred to in subparagraph (A) or (B). In no event may an action for damages under this Act with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 104(b) or section 120 (relating to Federal fa-

cilities). The limitation in the preceding sentence on commencing an action before giving notice or before selection of the remedial action does not apply to actions filed on or before the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) Actions for recovery of costs.—An initial action for recovery of the costs referred to in section 107 must be commenced—

"(A) for a removal action, within 3 years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under section 104(c)(1)(C) for continued response action; and

"(B) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages. A subsequent action or actions under section 107 for further response costs at the vessel or facility may be maintained at any time during the response action, but must be commenced no later than 3 years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under section 107 for recovery of costs at any time after such costs have been incurred.

"(3) Contribution.—No action for contribution for any response costs or damages may be commenced more than 3 years after—

"(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

"(B) the date of an administrative order under section 122(g) (relating to de minimis settlements) or 122(h) (relating to cost recovery settlements) or entry of a judicially approved settlement with respect to such costs or damages.

"(4) Subrogation.—No action based on rights subrogated pursuant to this section by reason of payment of a claim may be commenced under this title more than 3 years after the date of payment of such claim.

"(5) Actions to recover indemnification payments.—Notwithstanding any other provision of this subsection, where a payment pursuant to an indemnification agreement with a response action contractor is made under section 119, an action under section 107 for recovery of such indemnification payment from a potentially responsible party may be brought at any time before the expiration of 3 years from the date on which such payment is made.

"(6) Minors and incompetents.—The time limitations contained herein shall not begin to run—

"(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

"(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.".

(c) PRE-ENFORCEMENT REVIEW.—

(1) CONFORMING AMENDMENT.—Section 113(b) of CERCLA is amended by striking out "subsection" and inserting in lieu thereof "subsections" and inserting "and (h)" after "(a)".

(2) TIMING OF REVIEW; ADMINISTRATIVE RECORD.—Section 113 of CERCLA is amended by adding at the end thereof the following new subsections:

"(h) TIMING OF REVIEW.—No Federal court shall have jurisdiction under Federal law other than under section 1332 of title 28 of the United States Code (relating to diversity of citizenship jurisdiction) or under State law which is applicable or relevant and appropriate under section 121 (relating to cleanup standards) to review any challenges to removal or remedial action selected under section 104, or to review any order issued under section 106(a), in any action except one of the following:

"(1) An action under section 107 to recover response costs or damages or for contribution.

"(2) An action to enforce an order issued under section 106(a) or to recover a penalty for violation of such order.

"(3) An action for reimbursement under section 106(b)(2).

"(4) An action under section 310 (relating to citizens suits) alleging that the removal or remedial action taken under section 104 or secured under section 106 was in violation of any requirement of this Act. Such an action may not be brought with regard to a removal where a remedial action is to be undertaken at the site.

"(5) An action under section 106 in which the United States has moved to compel a remedial action.

"(i) INTERVENTION.—In any action commenced under this Act or under the Solid Waste Disposal Act in a court of the United States, any person may intervene as a matter of right when such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the President or the State shows that the person's interest is adequately represented by existing parties.

"(j) JUDICIAL REVIEW.—

"(1) LIMITATION.—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

"(2) STANDARD.—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that

the decision was arbitrary and capricious or otherwise not in accordance with law.

"(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

"(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

"(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

"(1) ADMINISTRATIVE RECORD.—The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

"(2) PARTICIPATION PROCEDURES.—

"(A) REMOVAL ACTION.—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

"(B) REMEDIAL ACTION.—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

"(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

"(ii) A reasonable opportunity to comment and provide information regarding the plan.

"(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2)(relating to public participation).

"(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

"(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5 of the

United States Code to carry out the requirements of this subparagraph.

"(C) INTERIM RECORD.—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

"(D) POTENTIALLY RESPONSIBLE PARTIES.—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

"(l) NOTICE OF ACTIONS.—Whenever any action is brought under this Act in a court of the United States by a plaintiff other than the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.".

SEC. 114. RELATIONSHIP TO OTHER LAW.

(a) USED OIL.—Section 114 (c) of CERCLA is amended to read as follows:

"(c) RECYCLED OIL.—

"(1) SERVICE STATION DEALERS, ETC.—No person (including the United States or any State) may recover, under the authority of subsection (a)(3) or (a)(4) of section 107, from a service station dealer for any response costs or damages resulting from a release or threatened release of recycled oil, or use the authority of section 106 against a service station dealer other than a person described in subsection (a)(1) or (a)(2) of section 107, if such recycled oil—

"(A) is not mixed with any other hazardous substance, and

"(B) is stored, treated, transported, or otherwise managed in compliance with regulations or standards promulgated pursuant to section 3014 of the Solid Waste Disposal Act and other applicable authorities.

Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release or threatened release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action.

"(2) PRESUMPTION.—Solely for the purposes of this subsection, a service station dealer may presume that a small quantity of used oil is not mixed with other hazardous substances if it—

"(A) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and

"(B) is presented, by such owner, to the dealer for collection, accumulation, and delivery to an oil recycling facility.

"(3) Definition.—For purposes of this subsection, the terms 'used oil' and 'recycled oil' have the same meanings as set forth in sections 1004(36) and 1004(37) of the Solid Waste Disposal Act and regulations promulgated pursuant to that Act.

"(4) Effective date.—The effective date of paragraphs (1) and (2) of this subsection shall be the effective date of regulations or standards promulgated under section 3014 of the Solid Waste Disposal Act that include, among other provisions, a requirement to conduct corrective action to respond to any releases of recycled oil under subtitle C or subtitle I of such Act.".

(b) Definition of Service Station Dealer.—Section 101 of CERCLA is amended by inserting the following at the end thereof:

"(37)(A) The term 'service station dealer' means any person—

"(i) who owns or operates a motor vehicle service station, filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles, and

"(ii) who accepts for collection, accumulation, and delivery to an oil recycling facility, recycled oil that (I) has been removed from the engine of a light duty motor vehicle or household appliances by the owner of such vehicle or appliances, and (II) is presented, by such owner, to such person for collection, accumulation, and delivery to an oil recycling facility.

"(B) For purposes of section 114(c), the term 'service station dealer' shall, notwithstanding the provisions of subparagraph (A), include any government agency that establishes a facility solely for the purpose of accepting recycled oil that satisfies the criteria set forth in subclauses (I) and (II) of subparagraph (A)(ii), and, with respect to recycled oil that satisfies the criteria set forth in subclauses (I) and (II), owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver such oil to an oil recycling facility.

"(C) The President shall promulgate regulations regarding the determination of what constitutes a significant percentage of the gross revenues of an establishment for purposes of this paragraph.".

SEC. 115. DELEGATION; REGULATIONS.

Section 115 of CERCLA is not amended.

SEC. 116. SCHEDULES.

Title I of CERCLA is amended by adding the following new section after section 115:

"SEC. 116. SCHEDULES.

"(a) Assessment and Listing of Facilities.—It shall be a goal of this Act that, to the maximum extent practicable—

"(1) not later than January 1, 1988, the President shall complete preliminary assessments of all facilities that are contained (as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986) on the Comprehensive Environmental Response, Compensation, and Liability Information

System (CERCLIS) including in each assessment a statement as to whether a site inspection is necessary and by whom it should be carried out; and

"(2) not later than January 1, 1989, the President shall assure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary pursuant to paragraph (1).

"(b) EVALUATION.—Within 4 years after enactment of the Superfund Amendments and Reauthorization Act of 1986, each facility listed (as of the date of such enactment) in the CERCLIS shall be evaluated if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. The evaluation shall be in accordance with the criteria established in section 105 under the National Contingency Plan for determining priorities among release for inclusion on the National Priorities List. In the case of a facility listed in the CERCLIS after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the facility shall be evaluated within 4 years after the date of such listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment.

"(c) EXPLANATIONS.—If any of the goals established by subsection (a) or (b) are not achieved, the President shall publish an explanation of why such action could not be completed by the specified date.

"(d) COMMENCEMENT OF RI/FS.—The President shall assure that remedial investigations and feasibility studies (RI/FS) are commenced for facilities listed on the National Priorities List, in addition to those commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, in accordance with the following schedule:

"(1) not fewer than 275 by the date 36 months after the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and

"(2) if the requirement of paragraph (1) is not met, not fewer than an additional 175 by the date 4 years after such date of enactment, an additional 200 by the date 5 years after such date of enactment, and a total of 650 by the date 5 years after such date of enactment.

"(e) COMMENCEMENT OF REMEDIAL ACTION.—The President shall assure that substantial and continuous physical on-site remedial action commences at facilities on the National Priorities List, in addition to those facilities on which remedial action has commenced prior to the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, at a rate not fewer than:

"(1) 175 facilities during the first 36-month period after enactment of this subsection; and

"(2) 200 additional facilities during the following 24 months after such 36-month period.".

SEC. 117. PUBLIC PARTICIPATION.

Title I of CERCLA is amended by adding the following new section after section 116:

"SEC. 117. PUBLIC PARTICIPATION.

"(a) PROPOSED PLAN.—Before adoption of any plan for remedial action to be undertaken by the President, by a State, or by any other

person, under section 104, 106, 120, or 122, the President or State, as appropriate, shall take both of the following actions:

"(1) Publish a notice and brief analysis of the proposed plan and make such plan available to the public.

"(2) Provide a reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility at issue regarding the proposed plan and regarding any proposed findings under section 121(d)(4) (relating to cleanup standards). The President or the State shall keep a transcript of the meeting and make such transcript available to the public.

The notice and analysis published under paragraph (1) shall include sufficient information as may be necessary to provide a reasonable explanation of the proposed plan and alternative proposals considered.

"(b) FINAL PLAN.—Notice of the final remedial action plan adopted shall be published and the plan shall be made available to the public before commencement of any remedial action. Such final plan shall be accompanied by a discussion of any significant changes (and the reasons for such changes) in the proposed plan and a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations under subsection (a).

"(c) EXPLANATION OF DIFFERENCES.—After adoption of a final remedial action plan—

"(1) if any remedial action is taken,

"(2) if any enforcement action under section 106 is taken, or

"(3) if any settlement or consent decree under section 106 or section 122 is entered into,

and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

"(d) PUBLICATION.—For the purposes of this section, publication shall include, at a minimum, publication in a major local newspaper of general circulation. In addition, each item developed, received, published, or made available to the public under this section shall be available for public inspection and copying at or near the facility at issue.

"(e) GRANTS FOR TECHNICAL ASSISTANCE.—

"(1) AUTHORITY.—Subject to such amounts as are provided in appropriations Acts and in accordance with rules promulgated by the President, the President may make grants available to any group of individuals which may be affected by a release or threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan. Such grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility.

"(2) AMOUNT.—The amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where

such waiver is necessary to carry out the purposes of this subsection. Each grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total of costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility. Not more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action.".

SEC. 118. MISCELLANEOUS PROVISIONS.

(a) PRIORITY FOR DRINKING WATER SUPPLIES.—Title I of CERCLA is amended by adding the following new section after section 117:

"SEC. 118. HIGH PRIORITY FOR DRINKING WATER SUPPLIES.

"For purposes of taking action under section 104 or 106 and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.".

(b) REMOVAL AND TEMPORARY STORAGE OF CONTAINERS OF RADON CONTAMINATED SOIL.—Not later than 90 days after the enactment of this Act, the Administrator shall make a grant of $7,500,000 to the State of New Jersey for transportation from residential areas in the State of New Jersey and temporary storage of approximately 14,000 containers of radon contaminated soil which is the subject of a remedial action for which a remedial investigation and feasibility study has been initiated before such date. Such containers shall be transported to and temporarily stored at any site in the State of New Jersey designated by the Governor of such State. For purposes of section 111(a) of CERCLA, the grant under this subsection for transportation and storage of such containers shall be treated as payment of governmental response cost incurred pursuant to section 104 of CERCLA.

(c) UNCONSOLIDATED QUATERNARY AQUIFER.—Notwithstanding any other provision of law, no person may—

(1) locate or authorize the location of a landfill, surface impoundment, waste pile, injection well, or land treatment facility over the Unconsolidated Quaternary Aquifer, or the recharge zone or streamflow source zone of such aquifer, in the Rockaway River Basin, New Jersey (as such aquifer and zones are described in the Federal Register, January 24, 1984, pages 2946–2948); or

(2) place or authorize the placement of solid waste in a landfill, surface impoundment, waste pile, injection well, or land treatment facility over such aquifer or zone.

This subsection may be enforced under sections 309(a) and (b) of the Federal Water Pollution Control Act. For purposes of section 309(c) of such Act, a violation of this subsection shall be considered a violation of section 301 of such Act.

(d) Study of Shortages of Skilled Personnel.—The Comptroller General shall study the problem of shortages of skilled personnel in the Environmental Protection Agency to carry out response actions under CERCLA. In particular the Comptroller General shall study—

(1) the types of skilled personnel needed for response actions for which there are shortages in the Environmental Protection Agency,

(2) the extent of such shortages,

(3) pay differential between the public and private sectors for the skilled positions involved in response actions,

(4) the extent to which skilled personnel of Federal and State governments involved in response actions are leaving their positions for employment in the private sector,

(5) the success of programs of the Department of Defense and the Office of Personnel Management in retaining skilled personnel, and

(6) the types of training required to improve the skills of employees carrying out response actions.

The Comptroller General shall complete the study required by this subsection and submit a report on the results thereof to Congress not later than July 1, 1987.

(e) State Requirements Not Applicable to Certain Transfers.—No State or local requirement shall apply to the transfer and disposal of any hazardous substance or pollutant or contaminant from a facility at which a release or threatened release has occurred to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act is in effect if the following conditions apply—

(1) Such permit was issued after January 1, 1983 and before November 1, 1984.

(2) The transfer and disposal is carried out pursuant to a cooperative agreement between the Administrator and the State.

(3) The facility at which the release or threatened release has occurred is identified as the McColl Site in Fullerton, California.

The terms used in this section shall have the same meaning as when used in title I of CERCLA.

(f) Study of Lead Poisoning in Children.—(1) The Administrator of the Agency for Toxic Substances and Disease Registry shall, in consultation with the Administrator of the Environmental Protection Agency and other officials as appropriate, not later than March 1, 1987, submit to the Congress, a report on the nature and extent of lead poisoning in children from environmental sources. Such report shall include, at a minimum, the following information—

(A) an estimate of the total number of children, arrayed according to Standard Metropolitan Statistical Area or other appropriate geographic unit, exposed to environmental sources of lead at concentrations sufficient to cause adverse health effects;

(B) an estimate of the total number of children exposed to environmental sources of lead arrayed according to source or source types;

(C) a statement of the long term consequences for public health of unabated exposures to environmental sources of lead and including but not limited to, diminution in intelligence, increases in morbidity and mortality; and

(D) methods and alternatives available for reducing exposures of children to environmental sources of lead.

(2) Such report shall also score and evaluate specific sites at which children are known to be exposed to environmental sources of lead due to releases, utilizing the Hazard Ranking system of the National Priorities List.

(3) The costs of preparing and submitting the report required by this section shall be borne by the Hazardous Substance Superfund established under subchapter A of chapter 98 of Internal Revenue Code of 1954.

(g) FEDERALLY LICENSED DAM.—For purposes of CERCLA in the case of the Milltown Dam in the State of Montana licensed under part 1 of the Federal Power Act and designated as FERC license number 2543-004, if a hazardous substance, pollutant, or contaminant—

(1) has been released into the environment upstream of the dam, and

(2) has subsequently come to be located in the reservoir created by such dam

notwithstanding section 101(20) of such Act, the term "owner or operator" does not include the owner or operator of the dam unless such owner or operator is a person who would otherwise be liable for such release or threatened release under section 107 of such Act.

(h) COMMUNITY RELOCATION AT TIMES BEACH SITE.—For purposes of any Missouri dioxon site at which a temporary or permanent relocation decision has been made, or is under active consideration, by the Administrator as of the enactment of this Act, the terms "remove" and "removal" as used in CERCLA shall be deemed to include the costs of permanent relocation of residents where it is determined that such permanent relocation is cost effective or may be necessary to protect health or welfare. In the case of a business located in an area of evacuation or relocation at such facility, such terms may also include the payment of those installments of principal and interest on business debt which accrue between the date of evacuation or temporary relocation and 30 days following the date that permanent relocation is actually accomplished or, if permanent relocation is formally rejected as the appropriate response, the date on which evacuation or temporary relocation ceases. In the case of an individual unemployed as a result of such evacuation or relocation, such terms may also include the provision of assistance identical to that authorized by sections 407, 408, and 409 of the Disaster Relief Act of 1974; except that the costs of such assistance shall be paid from the Trust Fund established under amendments made to the Internal Revenue Code of 1954 by this Act. Section 104(c)(1) of CERCLA shall not apply to obligations from the Fund for permanent relocation under this paragraph.

(i) LIMITED WAIVERS IN STATE OF ILLINOIS.—

(1) MOBILE INCINERATORS.—In the case of remedial actions specifically involving mobile incinerator units in the State of Illinois, if such remedial actions are undertaken by the State

under the authority of a State Superfund law or equivalent authority, the State may, with the approval of the Administrator, waive any permit requirement under subtitle C of the Solid Waste Disposal Act which would be otherwise applicable to such action to the extent that the following conditions are met:

(A) No transfer.—The incinerator does not involve the transfer of a hazardous substance or pollutant or contaminant from the facility at which the release or threatened release occurs to an offsite facility.

(B) Remedial action.—The remedial action provides each of the following:

(i) Changes in the character or composition of the hazardous substance or pollutant or contaminant concerned so that it no longer presents a risk to public health.

(ii) Protection against accidental emissions during operation.

(iii) Protection of public health considering the multimedia impacts of the treatment process.

(C) Public participation.—The State provides procedures for public participation regarding the response action which are at least equivalent to the level of public participation procedures applicable under CERCLA and under the Solid Waste Disposal Act.

(2) Effect of waiver.—The waiver of any permit requirement under this subsection shall not be construed to waive any standard or level of control which—

(A) is applicable to any hazardous substance or pollutant or contaminant involved in the remedial action; and

(B) would otherwise be contained in the permit.

Such waiver of any permit requirement under subtitle C of the Solid Waste Disposal Act shall only apply to the extent that the facility or remedial action involves the onsite treatment with a mobile incineration unit of waste present at such site. The waiver shall not apply to any other regulated or potentially regulated activity, including the use of the mobile incineration unit for actions not authorized by the State.

(3) Expiration of authority.—The authority of this subsection shall terminate at the end of 3 years, unless the State demonstrates, to the satisfaction of the Administrator, that the operation of mobile incinerators in the State has sufficiently protected public health and the environment and is consistent with the criteria required for a permit under subtitle C of the Solid Waste Disposal Act.

(j) Study of Joint Use of Trucks.—

(1) Study.—The Administrator, in consultation with the Secretary of Transportation, shall conduct a study of problems associated with the use of any vehicle for purposes other than the transportation of hazardous substances when that vehicle is used at other times for the transportation of hazardous substances. At a minimum, the Administrator shall consider—

(A) whether such joint use of vehicles should be prohibited, and

(B) whether, if such joint use is permitted, special safeguards should be taken to minimize threats to public health and the environment.

(2) REPORT.—The Administrator shall submit a report, along with recommendations, to Congress on the results of the study conducted under paragraph (1) not later than 180 days after the date of the enactment of this Act.

(k) RADON ASSESSMENT AND MITIGATION.—

(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act, the Administrator shall submit to the Congress a report which shall, to the extent possible—

(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

(B) assess the levels of radon gas that are present in such structures;

(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

(E) include guidance and public information materials based on the findings or research of mitigating radon.

(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

(B) ANNUAL REPORTS.—The Administrator shall submit annual reports not later than February 1 of each year (beginning February 1, 1987) on the status of the demonstration program carried out under this subsection and on any such demonstration program initiated prior to enactment.

(C) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

(l) GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT OF HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response and waste management throughout the Gulf Coast.

(2) PURPOSES OF THE CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions or in normal handling of hazardous wastes to achieve better protection of human health and the environment.

(3) OPERATION OF CENTER.—(A) For purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a university related institute involved with the improvement of waste management. Such institute shall be located in Jefferson County, Texas.

(B) The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Texas, Louisiana, Mississippi, Alabama, and Florida in order to carry out the purposes of the Center.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for purposes of carrying out this subsection for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(m) RADON PROTECTION AT CURRENT NATIONAL PRIORITIES LIST SITES .—It is the sense of the Congress that the President, in selecting response action for facilities included on the National Priorities List published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 because of the presence of radon, is not required by statute or regulations to use fully demonstrated methods, particularly those involving the offsite transport and disposition of contaminated material, but may use innovative or alternative methods which protect human health and the environment in a more cost-effective manner.

(n) SPILL CONTROL TECHNOLOGY.—

(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection, the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

(A) documents and archives spill control technology;

(B) investigates and analyzes significant hazardous spill incidents;

(C) develops and provides generic emergency action plans;

(D) documents and archives spill test results;

(E) develops emergency action plans to respond to spills;

(F) conducts training of spill response personnel; and

(G) establishes safety standards for personnel engaged in spill response activities.

(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.

(o) PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER.—

(1) ESTABLISHMENT.—The Administrator shall establish a hazardous substance research, development, and demonstration center (hereinafter in this subsection referred to as the "Center") for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest.

(2) PURPOSES OF CENTER.—The Center shall carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative technologies which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

(3) OPERATION OF CENTER.—

(A) NONPROFIT ENTITY.—For the purposes of operating the Center, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, a nonprofit private entity as defined in section 201(i) of Public Law 96-517 which entity shall agree to provide the basic technical and management personnel. Such nonprofit private entity shall also agree to provide at least two permanent research facilities, one of which shall be located in Benton County, Washington, and one of which shall be located in Clallam County, Washington.

(B) AUTHORITIES.—The Center shall be authorized to make grants, accept contributions, and enter into agreements with universities located in the States of Washington, Oregon, Idaho, and Montana in order to carry out the purposes of the Center.

(4) HAZARDOUS WASTE RESEARCH AT THE HANFORD SITE.—

(A) INTERAGENCY AGREEMENTS.—The Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing for research, evaluation, testing, development, and demonstration into alternative or innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site, in the State of Washington.

(B) FUNDING.—There is authorized to be appropriated to the Secretary of Energy for purposes of carrying out this paragraph for fiscal years beginning after September 30,

1986, not more than $5,000,000. All sums appropriated under this subparagraph shall be provided to the Administrator by the Secretary of Energy, pursuant to the interagency agreement entered into under subparagraph (A), for the purpose of the Administrator entering into contracts and cooperative agreements with, and making grants to, the Center in order to carry out the research, evaluation, testing, development, and demonstration described in paragraph (1).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for purposes of carrying out this subsection (other than paragraph (4)) for fiscal years beginning after September 30, 1986, not more than $5,000,000.

(p) SILVER CREEK TAILINGS.—Effective with the date of enactment of this Act, the facility listed in Group 7 in EPA National Priorities List Update #4 (50 Federal Register 37956, September 18, 1985), the site in Park City, Utah, which is located on tailings from noncoal mining operations, shall be deemed removed from the list of sites recommended for inclusion on the National Priorities List, unless the President determines upon site specific data not used in the proposed listing of such facility, that the facility meets requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SEC. 119. RESPONSE ACTION CONTRACTORS.

Title I of CERCLA is amended by adding the following new section after section 118:

"SEC. 119. RESPONSE ACTION CONTRACTORS.

"(a) LIABILITY OF RESPONSE ACTION CONTRACTORS.—

"(1) RESPONSE ACTION CONTRACTORS.—A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this title or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

"(2) NEGLIGENCE, ETC.—Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

"(3) EFFECT ON WARRANTIES; EMPLOYER LIABILITY.—Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

"(4) GOVERNMENTAL EMPLOYEES.—A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption

from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

"(b) Savings Provisions.—

"(1) Liability of other persons.—The defense provided by section 107(b)(3) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) and the preceding sentence, nothing in this section shall affect the liability under this Act or under any other Federal or State law of any person, other than a response action contractor.

"(2) Burden of plaintiff.—Nothing in this section shall affect the plaintiff's burden of establishing liability under this title.

"(c) Indemnification.—

"(1) In general.—The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this title, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

"(2) Applicability.—This subsection shall apply only with respect to a response action carried out under written agreement with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this title; or

"(D) any potentially responsible party carrying out any agreement under section 122 (relating to settlements) or section 106 (relating to abatement).

"(3) Source of funding.—This subsection shall not be subject to section 1301 or 1341 of title 31 of the United States Code or section 3732 of the Revised Statutes (41 U.S.C. 11) or to section 3 of the Superfund Amendments and Reauthorization Act of 1986. For purposes of section 111, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 104. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

"(4) Requirements.—An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

"(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the

contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

"(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.

"(C) In the case of a response action contract covering more than one facility, the response action contractor agrees to continue to make such diligent efforts each time the contractor begins work under the contract at a new facility.

"(5) LIMITATIONS.—

"(A) LIABILITY COVERED.—Indemnification under this subsection shall apply only to response action contractor liability which results from a release of any hazardous substance or pollutant or contaminant if such release arises out of response action activities.

"(B) DEDUCTIBLES AND LIMITS.—An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

"(C) CONTRACTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(i) DECISION TO INDEMNIFY.—In deciding whether to enter into an indemnification agreement with a response action contractor carrying out a written contract or agreement with any potentially responsible party, the President shall determine an amount which the potentially responsible party is able to indemnify the contractor. The President may enter into such an indemnification agreement only if the President determines that such amount of indemnification is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. The President shall make the determinations in the preceding sentences (with respect to the amount and the adequacy of the amount) taking into account the total net assets and resources of potentially responsible parties with respect to the facility at the time of such determinations.

"(ii) CONDITIONS.—The President may pay a claim under an indemnification agreement referred to in clause (i) for the amount determined under clause (i) only if the contractor has exhausted all administrative, judicial, and common law claims for indemnification against all potentially responsible parties participating in the clean-up of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with such party. Such indemnification agreement shall require such contractor to pay any deductible established under subparagraph (B) before the contractor may re-

cover any amount from the potentially responsible party or under the indemnification agreement.

"(D) RCRA FACILITIES.—No owner or operator of a facility regulated under the Solid Waste Disposal Act may be indemnified under this subsection with respect to such facility.

"(E) PERSONS RETAINED OR HIRED.—A person retained or hired by a person described in subsection (e)(2)(B) shall be eligible for indemnification under this subsection only if the President specifically approves of the retaining or hiring of such person.

"(6) COST RECOVERY.—For purposes of section 107, amounts expended pursuant to this subsection for indemnification of any person who is a response action contractor with respect to any release or threatened release shall be considered a cost of response incurred by the United States Government with respect to such release.

"(7) REGULATIONS.—The President shall promulgate regulations for carrying out the provisions of this subsection. Before promulgation of the regulations, the President shall develop guidelines to carry out this section. Development of such guidelines shall include reasonable opportunity for public comment.

"(8) STUDY.—The Comptroller General shall conduct a study in the fiscal year ending September 30, 1989, on the application of this subsection, including whether indemnification agreements under this subsection are being used, the number of claims that have been filed under such agreements, and the need for this subsection. The Comptroller General shall report the findings of the study to Congress no later than September 30, 1989.

"(d) EXCEPTION.—The exemption provided under subsection (a) and the authority of the President to offer indemnification under subsection (c) shall not apply to any person covered by the provisions of paragraph (1), (2), (3), or (4) of section 107(a) with respect to the release or threatened release concerned if such person would be covered by such provisions even if such person had not carried out any actions referred to in subsection (e) of this section.

"(e) DEFINITIONS.—For purposes of this section—

"(1) RESPONSE ACTION CONTRACT.—The term 'response action contract' means any written contract or agreement entered into by a response action contractor (as defined in paragraph (2)(A) of this subsection) with—

"(A) the President;

"(B) any Federal agency;

"(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 104(d)(1) of this Act; or

"(D) any potentially responsible party carrying out an agreement under section 106 or 122;

to provide any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act, with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from the facility *or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility.*

"(2) RESPONSE ACTION CONTRACTOR.—The term 'response action contractor' means—

"(A) any—

"(i) person who enters into a response action contract with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility and is carrying out such contract; and

"(ii) person, public or nonprofit private entity, conducting a field demonstration pursuant to section 311(b); and

"(B) any person who is retained or hired by a person described in subparagraph (A) to provide any services relating to a response action.

"(3) INSURANCE.—The term 'insurance' means liability insurance which is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response action contract to provide response action.

"(f) COMPETITION.—Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and mapping, and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949. The Federal selection procedures shall apply to appropriate contracts negotiated by all Federal governmental agencies involved in carrying out this Act. Such procedures shall be followed by response action contractors and subcontractors.".

SEC. 120. FEDERAL FACILITIES.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 119:

"SEC. 120. FEDERAL FACILITIES.

"(a) APPLICATION OF ACT TO FEDERAL GOVERNMENT.—

"(1) IN GENERAL.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

"(2) APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regu-

lations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

"(3) EXCEPTIONS.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

"(4) STATE LAWS.—State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

"(b) NOTICE.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

"(c) FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the 'docket') which shall contain each of the following:

"(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

"(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

"(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional *office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.*

"(d) ASSESSMENT AND EVALUATION.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

"(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

"(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

"(e) REQUIRED ACTION BY DEPARTMENT.—

"(1) RI/FS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

"(2) COMMENCEMENT OF REMEDIAL ACTION; INTERAGENCY AGREEMENT.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

"(3) COMPLETION OF REMEDIAL ACTIONS.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

"(4) CONTENTS OF AGREEMENT.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

"(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

"(B) A schedule for the completion of each such remedial action.

"(C) Arrangements for long-term operation and maintenance of the facility.

"(5) ANNUAL REPORT.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

"(A) A report on the progress in reaching interagency agreements under this section.

"(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

"(C) A brief summary of the public comments regarding each proposed interagency agreement.

"(D) A description of the instances in which no agreement was reached.

"(E) A report on progress in conducting investigations and studies under paragraph (1).

"(F) A report on progress in conducting remedial actions.

"(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete re-

sponse action. Such reports shall also be submitted to the affected States.

"(6) SETTLEMENTS WITH OTHER PARTIES.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

"(f) STATE AND LOCAL PARTICIPATION.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

"(g) TRANSFER OF AUTHORITIES.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

"(h) PROPERTY TRANSFERRED BY FEDERAL AGENCIES.—

"(1) NOTICE.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

"(2) FORM OF NOTICE; REGULATIONS.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

"(3) CONTENTS OF CERTAIN DEEDS.—After the last day of the 6-month period beginning on the effective date of regulations

under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

"(A) to the extent such information is available on the basis of a complete search of agency files—

"(i) a notice of the type and quantity of such hazardous substances,

"(ii) notice of the time at which such storage, release, or disposal took place, and

"(iii) a description of the remedial action taken, if any, and

"(B) a covenant warranting that—

"(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

"(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

"(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (including corrective action requirements).

"(j) NATIONAL SECURITY.—

"(1) SITE SPECIFIC PRESIDENTIAL ORDERS.—The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response

action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(2) CLASSIFIED INFORMATION.—Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.".

(b) LIMITED GRANDFATHER.—Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities—

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.

SEC. 121. CLEANUP STANDARDS.

(a) AMENDMENT OF CERCLA.—Title I of CERCLA is amended by adding the following new section after section 120:

"SEC. 121. CLEANUP STANDARDS.

"(a) SELECTION OF REMEDIAL ACTION.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

"(b) GENERAL RULES.—(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of

various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

"(A) the long-term uncertainties associated with land disposal;

"(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

"(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

"(D) short- and long-term potential for adverse health effects from human exposure;

"(E) long-term maintenance costs;

"(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

"(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

"(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

"(c) REVIEW.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106, the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

"(d) DEGREE OF CLEANUP.—(1) Remedial actions selected under this section or otherwise required or agreed to by the President under this Act shall attain a degree of cleanup of hazardous substances, pollutants, and contaminants released into the environment and of control of further release at a minimum which assures protection of human health and the environment. Such remedial actions shall be relevant and appropriate under the circumstances presented by the release or threatened release of such substance, pollutant, or contaminant.

"(2)(A) With respect to any hazardous substance, pollutant or contaminant that will remain onsite, if—

"(i) any standard, requirement, criteria, or limitation under any Federal environmental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research and Sanctuaries Act, or the Solid Waste Disposal Act; or

"(ii) any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation, including each such State standard, requirement, criteria, or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the State in a timely manner,

is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria, or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

"(B)(i) In determining whether or not any water quality criteria under the Clean Water Act is relevant and appropriate under the circumstances of the release or threatened release, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which such criteria were developed, and the latest information available.

"(ii) For the purposes of this section, a process for establishing alternate concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—

"(I) there are known and projected points of entry of such groundwater into surface water; and

"(II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and

"(III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of entry of such groundwater into surface water

then the assumed point of human exposure may be at such known and projected points of entry.

"(C)(i) Clause (ii) of this subparagraph shall be applicable only in cases where, due to the President's selection, in compliance with subsection (b)(1), of a proposed remedial action which does not permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances, pollutants, or contaminants, the proposed disposition of waste generated by or associated with the remedial action selected by the President is land disposal in a State referred to in clause (ii).

"(ii) Except as provided in clauses (iii) and (iv), a State standard, requirement, criteria, or limitation (including any State siting standard or requirement) which could effectively result in the statewide prohibition of land disposal of hazardous substances, pollutants, or contaminants shall not apply.

"(iii) Any State standard, requirement, criteria, or limitation referred to in clause (ii) shall apply where each of the following conditions is met:

"(I) The State standard, requirement, criteria, or limitation is of general applicability and was adopted by formal means.

"(II) The State standard, requirement, criteria, or limitation was adopted on the basis of hydrologic, geologic, or other relevant considerations and was not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment.

"(III) The State arranges for, and assures payment of the incremental costs of utilizing, a facility for disposition of the hazardous substances, pollutants, or contaminants concerned.

"(iv) Where the remedial action selected by the President does not conform to a State standard and the State has initiated a law suit against the Environmental Protection Agency prior to May 1, 1986, to seek to have the remedial action conform to such standard, the President shall conform the remedial action to the State standard. The State shall assure the availability of an offsite facility for such remedial action.

"(3) In the case of any removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant offsite, such hazardous substance or pollutant or contaminant shall only be transferred to a facility which is operating in compliance with section 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, in compliance with the Toxic Substances Control Act or other applicable Federal law) and all applicable State requirements. Such substance or pollutant or contaminant may be transferred to a land disposal facility only if the President determines that both of the following requirements are met:

"(A) The unit to which the hazardous substance or pollutant or contaminant is transferred is not releasing any hazardous waste, or constituent thereof, into the groundwater or surface water or soil.

"(B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

The President shall notify the owner or operator of such facility of determinations under this paragraph.

"(4) The President may select a remedial action meeting the requirements of paragraph (1) that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation as required by paragraph (2) (including subparagraph (B) thereof), if the President finds that—

"(A) the remedial action selected is only part of a total remedial action that will attain such level or standard of control when completed;

"(B) compliance with such requirement at that facility will result in greater risk to human health and the environment than alternative options;

"(C) compliance with such requirements is technically impracticable from an engineering perspective;

"(D) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach;

"(E) with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied (or demonstrated the intention to consistently apply) the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State; or

"(F) in the case of a remedial action to be undertaken solely under section 104 using the Fund, selection of a remedial action that attains such level or standard of control will not provide a balance between the need for protection of public health and welfare and the environment at the facility under consideration, and the availability of amounts from the Fund to respond to other sites which present or may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of such threats.

The President shall publish such findings, together with an explanation and appropriate documentation.

"(e) PERMITS AND ENFORCEMENT.—(1) No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

"(2) A State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this Act in the United States district court for the district in which the facility is located. Any consent decree shall require the parties to attempt expeditiously to resolve disagreements concerning implementation of the remedial action informally with the appropriate Federal and State agencies. Where the parties agree, the consent decree may provide for administrative enforcement. Each consent decree shall also contain stipulated penalties for violations of the decree in an amount not to exceed $25,000 per day, which may be enforced by either the President or the State. Such stipulated penalties shall not be construed to impair or affect the authority of the court to order compliance with the specific terms of any such decree.

"(f) State Involvement.—(1) The President shall promulgate regulations providing for substantial and meaningful involvement by each State in initiation, development, and selection of remedial actions to be undertaken in that State. The regulations, at a minimum, shall include each of the following:

"(A) State involvement in decisions whether to perform a preliminary assessment and site inspection.

"(B) Allocation of responsibility for hazard ranking system scoring.

"(C) State concurrence in deleting sites from the National Priorities List.

"(D) State participation in the long-term planning process for all remedial sites within the State.

"(E) A reasonable opportunity for States to review and comment on each of the following:

"(i) The remedial investigation and feasibility study and all data and technical documents leading to its issuance.

"(ii) The planned remedial action identified in the remedial investigation and feasibility study.

"(iii) The engineering design following selection of the final remedial action.

"(iv) Other technical data and reports relating to implementation of the remedy.

"(v) Any proposed finding or decision by the President to exercise the authority of subsection (d)(4).

"(F) Notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State and an opportunity to participate in such negotiations and, subject to paragraph (2), be a party to any settlement.

"(G) Notice to the State and an opportunity to comment on the President's proposed plan for remedial action as well as on alternative plans under consideration. The President's proposed decision regarding the selection of remedial action shall be accompanied by a response to the comments submitted by the State, including an explanation regarding any decision under subsection (d)(4) on compliance with promulgated State standards. A copy of such response shall also be provided to the State.

"(H) Prompt notice and explanation of each proposed action to the State in which the facility is located.

Prior to the promulgation of such regulations, the President shall provide notice to the State of negotiations with potentially responsible parties regarding the scope of any response action at a facility in the State, and such State may participate in such negotiations and, subject to paragraph (2), any settlements.

"(2)(A) This paragraph shall apply to remedial actions secured under section 106. At least 30 days prior to the entering of any consent decree, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, the State may become a signatory to the consent decree.

"(B) If the State does not concur in such selection, and the State desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State shall intervene in the action under section 106 before entry of the consent decree, to seek to have the remedial action so conform. Such intervention shall be a matter of right. The remedial action shall conform to such standard, requirement, criteria, or limitation if the State establishes, on the administrative record, that the finding of the President was not supported by substantial evidence. If the court determines that the remedial action shall conform to such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State may become a signatory to the decree. If the court determines that the remedial action need not conform to such standard, requirement, criteria, or limitation, and the State pays or assures the payment of the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be so modified and the State shall become a signatory to the decree.

"(C) The President may conclude settlement negotiations with potentially responsible parties without State concurrence.

"(3)(A) This paragraph shall apply to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States. At least 30 days prior to the publication of the President's final remedial action plan, if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation, under the authority of subsection (d)(4), the President shall provide an opportunity for the State to concur or not concur in such selection. If the State concurs, or does not act within 30 days, the remedial action may proceed.

"(B) If the State does not concur in such selection as provided in subparagraph (A), and desires to have the remedial action conform to such standard, requirement, criteria, or limitation, the State may maintain an action as follows:

"(i) If the President has notified the State of selection of such a remedial action, the State may bring an action within 30 days of such notification for the sole purpose of determining whether the finding of the President is supported by substantial evidence. Such action shall be brought in the United States district court for the district in which the facility is located.

"(ii) If the State establishes, on the administrative record, that the President's finding is not supported by substantial evidence, the remedial action shall be modified to conform to such standard, requirement, criteria, or limitation.

"(iii) If the State fails to establish that the President's finding was not supported by substantial evidence and if the State pays, within 60 days of judgment, the additional costs attributable to meeting such standard, requirement, criteria, or limitation, the remedial action shall be selected to meet such standard, requirement, criteria, or limitation. If the State fails to pay within 60 days, the remedial action selected by the President shall proceed through completion.

"(C) Nothing in this section precludes, and the court shall not enjoin, the Federal agency from taking any remedial action unrelat-

ed to or not inconsistent with such standard, requirement, criteria, or limitation.".

(b) EFFECTIVE DATE.—With respect to section 121 of CERCLA, as added by this section—

(1) The requirements of section 121 of CERCLA shall not apply to any remedial action for which the Record of Decision (hereinafter in this section referred to as the "ROD") was signed, or the consent decree was lodged, before date of enactment.

(2) If the ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the Act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies to the maximum extent practicable with section 121 of CERCLA.

Any ROD signed before enactment of this Act and reopened after enactment of this Act to modify or supplement the selection of remedy shall be subject to the requirements of section 121 of CERCLA.

SEC. 122. SETTLEMENTS.

(a) NEW SECTION.—Title I of CERCLA is amended by adding the following new section after section 121:

"SEC. 122. SETTLEMENTS.

"(a) AUTHORITY TO ENTER INTO AGREEMENTS.—The President, in his discretion, may enter into an agreement with any person (including the owner or operator of the facility from which a release or substantial threat of release emanates, or any other potentially responsible person), to perform any response action (including any action described in section 104(b)) if the President determines that such action will be done properly by such person. Whenever practicable and in the public interest, as determined by the President, the President shall act to facilitate agreements under this section that are in the public interest and consistent with the National Contingency Plan in order to expedite effective remedial actions and minimize litigation. If the President decides not to use the procedures in this section, the President shall notify in writing potentially responsible parties at the facility of such decision and the reasons why use of the procedures is inappropriate. A decision of the President to use or not to use the procedures in this section is not subject to judicial review.

"(b) AGREEMENTS WITH POTENTIALLY RESPONSIBLE PARTIES.—

"(1) MIXED FUNDING.—An agreement under this section may provide that the President will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. In any case in which the President provides such reimbursement, the President shall make all reasonable efforts to recover the amount of such reimbursement under section 107 or under other relevant authorities.

"(2) REVIEWABILITY.—The President's decisions regarding the availability of fund financing under this subsection shall not be subject to judicial review under subsection (d).

"(3) RETENTION OF FUNDS.—If, as part of any agreement, the President will be carrying out any action and the parties will be paying amounts to the President, the President may, notwithstanding any other provision of law, retain and use such amounts for purposes of carrying out the agreement.

"(4) FUTURE OBLIGATION OF FUND.—In the case of a completed remedial action pursuant to an agreement described in paragraph (1), the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action. The Fund's obligation for such future remedial action may be met through Fund expenditures or through payment, following settlement or enforcement action, by parties who were not signatories to the original agreement.

"(c) EFFECT OF AGREEMENT.—

"(1) LIABILITY.—Whenever the President has entered into an agreement under this section, the liability to the United States under this Act of each party to the agreement, including any future liability to the United States, arising from the release or threatened release that is the subject of the agreement shall be limited as provided in the agreement pursuant to a covenant not to sue in accordance with subsection (f). A covenant not to sue may provide that future liability to the United States of a settling potentially responsible party under the agreement may be limited to the same proportion as that established in the original settlement agreement. Nothing in this section shall limit or otherwise affect the authority of any court to review in the consent decree process under subsection (d) any covenant not to sue contained in an agreement under this section. In determining the extent to which the liability of parties to an agreement shall be limited pursuant to a covenant not to sue, the President shall be guided by the principle that a more complete covenant not to sue shall be provided for a more permanent remedy undertaken by such parties.

"(2) ACTIONS AGAINST OTHER PERSONS.—If an agreement has been entered into under this section, the President may take any action under section 106 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (e)(2)(B) has expired. Nothing in this section shall be construed to affect either of the following:

"(A) The liability of any person under section 106 or 107 with respect to any costs or damages which are not included in the agreement.

"(B) The authority of the President to maintain an action under this Act against any person who is not a party to the agreement.

"(d) ENFORCEMENT.—

"(1) CLEANUP AGREEMENTS.—

"(A) CONSENT DECREE.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to remedial action under sec-

tion 106, following approval of the agreement by the Attorney General, except as otherwise provided in the case of certain administrative settlements referred to in subsection (g), the agreement shall be entered in the appropriate United States district court as a consent decree. The President need not make any finding regarding an imminent and substantial endangerment to the public health or the environment in connection with any such agreement or consent decree.

"(B) EFFECT.—The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release or threatened release concerned constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Except as otherwise provided in the Federal Rules of Evidence, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

"(C) STRUCTURE.—The President may fashion a consent decree so that the entering of such decree and compliance with such decree or with any determination or agreement made pursuant to this section shall not be considered an admission of liability for any purpose.

"(2) PUBLIC PARTICIPATION.—

"(A) FILING OF PROPOSED JUDGMENT.—At least 30 days before a final judgment is entered under paragraph (1), the proposed judgment shall be filed with the court.

"(B) OPPORTUNITY FOR COMMENT.—The Attorney General shall provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment. The Attorney General shall consider, and file with the court, any written comments, views, or allegations relating to the proposed judgment. The Attorney General may withdraw or withhold its consent to the proposed judgment if the comments, views, and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper, or inadequate.

"(3) 104(b) AGREEMENTS.—Whenever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 104(b), the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree.

"(e) SPECIAL NOTICE PROCEDURES.—

"(1) NOTICE.—Whenever the President determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible parties for taking response action (including any action described in section 104(b)) and would expedite remedial action, the President shall so notify all such parties and shall provide them with information concerning each of the following:

"(A) The names and addresses of potentially responsible parties (including owners and operators and other persons referred to in section 107(a)), to the extent such information is available.

"(B) To the extent such information is available, the volume and nature of substances contributed by each potentially responsible party identified at the facility.

"(C) A ranking by volume of the substances at the facility, to the extent such information is available.

The President shall make the information referred to in this paragraph available in advance of notice under this paragraph upon the request of a potentially responsible party in accordance with procedures provided by the President. The provisions of subsection (e) of section 104 regarding protection of confidential information apply to information provided under this paragraph. Disclosure of information generated by the President under this section to persons other than the Congress, or any duly authorized Committee thereof, is subject to other privileges or protections provided by law, including (but not limited to) those applicable to attorney work product. Nothing contained in this paragraph or in other provisions of this Act shall be construed, interpreted, or applied to diminish the required disclosure of information under other provisions of this or other Federal or State laws.

"(2) NEGOTIATION.—

"(A) MORATORIUM.—Except as provided in this subsection, the President may not commence action under section 104(a) or take any action under section 106 for 120 days after providing notice and information under this subsection with respect to such action. Except as provided in this subsection, the President may not commence a remedial investigation and feasibility study under section 104(b) for 90 days after providing notice and information under this subsection with respect to such action. The President may commence any additional studies or investigations authorized under section 104(b), including remedial design, during the negotiation period.

"(B) PROPOSALS.—Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 106 shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 106. Persons receiving notice and information under paragraph (1) of this subsection with respect to action under section 104(b) shall have 60 days from the date of receipt of such notice to make a proposal to the President for undertaking or financing the action under section 104(b).

"(C) ADDITIONAL PARTIES.—If an additional potentially responsible party is identified during the negotiation period or after an agreement has been entered into under this subsection concerning a release or threatened release, the President may bring the additional party into the negotiation or enter into a separate agreement with such party.

"(3) PRELIMINARY ALLOCATION OF RESPONSIBILITY.—

"(A) In general.—The President shall develop guidelines for preparing nonbinding preliminary allocations of responsibility. In developing these guidelines the President may include such factors as the President considers relevant, such as: volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors. When it would expedite settlements under this section and remedial action, the President may, after completion of the remedial investigation and feasibility study, provide a nonbinding preliminary allocation of responsibility which allocates percentages of the total cost of response among potentially responsible parties at the facility.

"(B) Collection of information.—To collect information necessary or appropriate for performing the allocation under subparagraph (A) or for otherwise implementing this section, the President may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the President deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy or failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

"(C) Effect.—The nonbinding preliminary allocation of responsibility shall not be admissible as evidence in any proceeding, and no court shall have jurisdiction to review the nonbinding preliminary allocation of responsibility. The nonbinding preliminary allocation of responsibility shall not constitute an apportionment or other statement on the divisibility of harm or causation.

"(D) Costs.—The costs incurred by the President in producing the nonbinding preliminary allocation of responsibility shall be reimbursed by the potentially responsible parties whose offer is accepted by the President. Where an offer under this section is not accepted, such costs shall be considered costs of response.

"(E) Decision to reject offer.—Where the President, in his discretion, has provided a nonbinding preliminary allocation of responsibility and the potentially responsible parties have made a substantial offer providing for response to the President which he rejects, the reasons for the rejection shall be provided in a written explanation. The President's decision to reject such an offer shall not be subject to judicial review.

"(4) Failure to propose.—If the President determines that a good faith proposal for undertaking or financing action under section 106 has not been submitted within 60 days of the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(a) or take an

action against any person under section 106 of this Act. If the President determines that a good faith proposal for undertaking or financing action under section 104(b) has not been submitted within 60 days after the provision of notice pursuant to this subsection, the President may thereafter commence action under section 104(b).

"(5) SIGNIFICANT THREATS.—Nothing in this subsection shall limit the President's authority to undertake response or enforcement action regarding a significant threat to public health or the environment within the negotiation period established by this subsection.

"(6) INCONSISTENT RESPONSE ACTION.—When either the President, or a potentially responsible party pursuant to an administrative order or consent decree under this Act, has initiated a remedial investigation and feasibility study for a particular facility under this Act, no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President.

"(f) COVENANT NOT TO SUE.—

"(1) DISCRETIONARY COVENANTS.—The President may, in his discretion, provide any person with a covenant not to sue concerning any liability to the United States under this Act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action, whether that action is onsite or offsite, if each of the following conditions is met:

"(A) The covenant not to sue is in the public interest.

"(B) The covenant not to sue would expedite response action consistent with the National Contingency Plan under section 105 of this Act.

"(C) The person is in full compliance with a consent decree under section 106 (including a consent decree entered into in accordance with this section) for response to the release or threatened release concerned.

"(D) The response action has been approved by the President.

"(2) SPECIAL COVENANTS NOT TO SUE.—In the case of any person to whom the President is authorized under paragraph (1) of this subsection to provide a covenant not to sue, for the portion of remedial action—

"(A) which involves the transport and secure disposition offsite of hazardous substances in a facility meeting the requirements of sections 3004 (c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of the Solid Waste Disposal Act, where the President has rejected a proposed remedial action that is consistent with the National Contingency Plan that does not include such offsite disposition and has thereafter required offsite disposition; or

"(B) which involves the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, such that, in the judgment of the President, the substances no longer present any current or currently foreseeable future significant risk to public health, welfare or the environ-

ment, no byproduct of the treatment or destruction process presents any significant hazard to public health, welfare or the environment, and all byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare or the environment,

the President shall provide such person with a covenant not to sue with respect to future liability to the United States under this Act for a future release or threatened release of hazardous substances from such facility, and a person provided such covenant not to sue shall not be liable to the United States under section 106 or 107 with respect to such release or threatened release at a future time.

"(3) REQUIREMENT THAT REMEDIAL ACTION BE COMPLETED.—A covenant not to sue concerning future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this Act at the facility that is the subject of such covenant.

"(4) FACTORS.—In assessing the appropriateness of a covenant not to sue under paragraph (1) and any condition to be included in a covenant not to sue under paragraph (1) or (2), the President shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

"(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

"(B) The nature of the risks remaining at the facility.

"(C) The extent to which performance standards are included in the order or decree.

"(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

"(E) The extent to which the technology used in the response action is demonstrated to be effective.

"(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

"(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

"(5) SATISFACTORY PERFORMANCE.—Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

"(6) ADDITIONAL CONDITION FOR FUTURE LIABILITY.—(A) Except for the portion of the remedial action which is subject to a covenant not to sue under paragraph (2) or under subsection (g) (relating to de minimis settlements), a covenant not to sue a person concerning future liability to the United States shall include an exception to the covenant that allows the President to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant

where such liability arises out of conditions which are unknown at the time the President certifies under paragraph (3) that remedial action has been completed at the facility concerned.

"(B) In extraordinary circumstances, the President may determine, after assessment of relevant factors such as those referred to in paragraph (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception referred to in subparagraph (A) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility.

"(C) The President is authorized to include any provisions allowing future enforcement action under section 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of public health, welfare, and the environment.

"(g) De Minimis Settlements.—

"(1) Expedited final settlement.—Whenever practicable and in the public interest, as determined by the President, the President shall as promptly as possible reach a final settlement with a potentially responsible party in an administrative or civil action under section 106 or 107 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the President, the conditions in either of the following subparagraph (A) or (B) are met:

"(A) Both of the following are minimal in comparison to other hazardous substances at the facility:

"(i) The amount of the hazardous substances contributed by that party to the facility.

"(ii) The toxic or other hazardous effects of the substances contributed by that party to the facility.

"(B) The potentially responsible party—

"(i) is the owner of the real property on or in which the facility is located;

"(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

"(iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

This subparagraph (B) does not apply if the potentially responsible party purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

"(2) Covenant not to sue.—The President may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (f).

"(3) Expedited agreement.—The President shall reach any such settlement or grant any such covenant not to sue as soon as possible after the President has available the information necessary to reach such a settlement or grant such a covenant.

"(4) Consent decree or administrative order.—A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. In the case of any facility where the total response costs exceed $500,000 (excluding interest), if the settlement is embodied as an administrative order, the order may be issued only with the prior written approval of the Attorney General. If the Attorney General or his designee has not approved or disapproved the order within 30 days of this referral, the order shall be deemed to be approved unless the Attorney General and the Administrator have agreed to extend the time. The district court for the district in which the release or threatened release occurs may enforce any such administrative order.

"(5) Effect of agreement.—A party who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(6) Settlements with other potentially responsible parties.—Nothing in this subsection shall be construed to affect the authority of the President to reach settlements with other potentially responsible parties under this Act.

"(h) Cost Recovery Settlement Authority.—

"(1) Authority to settle.—The head of any department or agency with authority to undertake a response action under this Act pursuant to the national contingency plan may consider, compromise, and settle a claim under section 107 for costs incurred by the United States Government if the claim has not been referred to the Department of Justice for further action. In the case of any facility where the total response costs exceed $500,000 (excluding interest), any claim referred to in the preceding sentence may be compromised and settled only with the prior written approval of the Attorney General.

"(2) Use of arbitration.—Arbitration in accordance with regulations promulgated under this subsection may be used as a method of settling claims of the United States where the total response costs for the facility concerned do not exceed $500,000 (excluding interest). After consultation with the Attorney General, the department or agency head may establish and publish regulations for the use of arbitration or settlement under this subsection.

"(3) Recovery of claims.—If any person fails to pay a claim that has been settled under this subsection, the department or agency head shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount of such claim, plus costs, attorneys' fees, and interest from the date of the settlement. In such an action, the terms of the settlement shall not be subject to review.

"(4) Claims for contribution.—A person who has resolved its liability to the United States under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement shall not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

"(i) Settlement Procedures.—

"(1) Publication in federal register.—At least 30 days before any settlement (including any settlement arrived at through arbitration) may become final under subsection (h), or under subsection (g) in the case of a settlement embodied in an administrative order, the head of the department or agency which has jurisdiction over the proposed settlement shall publish in the Federal Register notice of the proposed settlement. The notice shall identify the facility concerned and the parties to the proposed settlement.

"(2) Comment period.—For a 30-day period beginning on the date of publication of notice under paragraph (1) of a proposed settlement, the head of the department or agency which has jurisdiction over the proposed settlement shall provide an opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement.

"(3) Consideration of comments.—The head of the department or agency shall consider any comments filed under paragraph (2) in determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

"(j) Natural Resources.—

"(1) Notification of trustee.—Where a release or threatened release of any hazardous substance that is the subject of negotiations under this section may have resulted in damages to natural resources under the trusteeship of the United States, the President shall notify the Federal natural resource trustee of the negotiations and shall encourage the participation of such trustee in the negotiations.

"(2) Covenant not to sue.—An agreement under this section may contain a covenant not to sue under section 107(a)(4)(C) for damages to natural resources under the trusteeship of the United States resulting from the release or threatened release of hazardous substances that is the subject of the agreement, but only if the Federal natural resource trustee has agreed in writing to such covenant. The Federal natural resource trustee may agree to such covenant if the potentially responsible party agrees to undertake appropriate actions necessary to protect and restore the natural resources damaged by such release or threatened release of hazardous substances.

"(k) Section Not Applicable to Vessels.—The provisions of this section shall not apply to releases from a vessel.

"(l) Civil Penalties.—A potentially responsible party which is a party to an administrative order or consent decree entered pursuant to an agreement under this section or section 120 (relating to Feder-

al facilities) or which is a party to an agreement under section 120 and which fails or refuses to comply with any term or condition of the order, decree or agreement shall be subject to a civil penalty in accordance with section 109.

"(m) APPLICABILITY OF GENERAL PRINCIPLES OF LAW.—In the case of consent decrees and other settlements under this section (including covenants not to sue), no provision of this Act shall be construed to preclude or otherwise affect the applicability of general principles of law regarding the setting aside or modification of consent decrees or other settlements.".

(b) CONTRIBUTION.—Section 308 of CERCLA is amended by adding the following at the end thereof: "If an administrative settlement under section 122 has the effect of limiting any person's right to obtain contribution from any party to such settlement, and if the effect of such limitation would constitute a taking without just compensation in violation of the fifth amendment of the Constitution of the United States, such person shall not be entitled, under other laws of the United States, to recover compensation from the United States for such taking, but in any such case, such limitation on the right to obtain contribution shall be treated as having no force and effect.".

SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

(a) Title I of CERCLA is amended by adding the following after section 122:

"SEC. 123. REIMBURSEMENT TO LOCAL GOVERNMENTS.

"(a) APPLICATION.—Any general purpose unit of local government for a political subdivision which is affected by a release or threatened release at any facility may apply to the President for reimbursement under this section.

"(b) REIMBURSEMENT.—

"(1) TEMPORARY EMERGENCY MEASURES.—The President is authorized to reimburse local community authorities for expenses incurred (before or after the enactment of the Superfund Amendments and Reauthorization Act of 1986) in carrying out temporary emergency measures necessary to prevent or mitigate injury to human health or the environment associated with the release or threatened release of any hazardous substance or pollutant or contaminant. Such measures may include, where appropriate, security fencing to limit access, response to fires and explosions, and other measures which require immediate response at the local level.

"(2) LOCAL FUNDS NOT SUPPLANTED.—Reimbursement under this section shall not supplant local funds normally provided for response.

"(c) AMOUNT.—The amount of any reimbursement to any local authority under subsection (b)(1) may not exceed $25,000 for a single response. The reimbursement under this section with respect to a single facility shall be limited to the units of local government having jurisdiction over the political subdivision in which the facility is located.

"(d) PROCEDURE.—Reimbursements authorized pursuant to this section shall be in accordance with rules promulgated by the Ad-

ministrator within one year after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

SEC. 124. METHANE RECOVERY.

(a) IN GENERAL.—Title I of CERCLA is amended by adding the following new section after section 123:

"SEC. 124. METHANE RECOVERY.

"(a) IN GENERAL.—In the case of a facility at which equipment for the recovery or processing (including recirculation of condensate) of methane has been installed, for purposes of this Act:

"(1) The owner or operator of such equipment shall not be considered an 'owner or operator', as defined in section 101(20), with respect to such facility.

"(2) The owner or operator of such equipment shall not be considered to have arranged for disposal or treatment of any hazardous substance at such facility pursuant to section 107 of this Act.

"(3) The owner or operator of such equipment shall not be subject to any action under section 106 with respect to such facility.

"(b) EXCEPTIONS.—Subsection (a) does not apply with respect to a release or threatened release of a hazardous substance from a facility described in subsection (a) if either of the following circumstances exist:

"(1) The release or threatened release was primarily caused by activities of the owner or operator of the equipment described in subsection (a).

"(2) The owner or operator of such equipment would be covered by paragraph (1), (2), (3), or (4) of subsection (a) of section 107 with respect to such release or threatened release if he were not the owner or operator of such equipment.

In the case of any release or threatened release referred to in paragraph (1), the owner or operator of the equipment described in subsection (a) shall be liable under this Act only for costs or damages primarily caused by the activities of such owner or operator.".

(b) REGULATION UNDER THE SOLID WASTE DISPOSAL ACT.—Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act, the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.

SEC. 125. CERTAIN SPECIAL STUDY WASTES.

Title I of CERCLA is amended by adding the following new section after section 124:

"SEC. 125. SECTION 3001(b)(3)(A)(i) WASTE.

"(a) REVISION OF HAZARD RANKING SYSTEM.—This section shall apply only to facilities which are not included or proposed for inclusion on the National Priorities List and which contain substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act. As expeditiously as practicable, the President shall revise the hazard ranking system in effect under the National Contingency Plan with respect to such facilities in a manner which assures appropriate consideration of each of the following site-specific characteristics of such facilities:

"(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison thereof with other wastes.

"(2) The extent of, and potential for, release of such hazardous constituents into the environment.

"(3) The degree of risk to human health and the environment posed by such constituents.

"(b) INCLUSION PROHIBITED.—Until the hazard ranking system is revised as required by this section, the President may not include on the National Priorities List any facility which contains substantial volumes of waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation made principally on the volume of such waste and not on the concentrations of the hazardous constituents of such waste. Nothing in this section shall be construed to affect the President's authority to include any such facility on the National Priorities List based on the presence of other substances at such facility or to exercise any other authority of this Act with respect to such other substances.".

SEC. 126. WORKER PROTECTION STANDARDS.

(a) PROMULGATION.—Within one year after the date of the enactment of this section, the Secretary of Labor shall, pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety protection of employees engaged in hazardous waste operations.

(b) PROPOSED STANDARDS.—The Secretary of Labor shall issue proposed regulations on such standards which shall include, but need not be limited to, the following worker protection provisions:

(1) SITE ANALYSIS.—Requirements for a formal hazard analysis of the site and development of a site specific plan for worker protection.

(2) TRAINING.—Requirements for contractors to provide initial and routine training of workers before such workers are permitted to engage in hazardous waste operations which would expose them to toxic substances.

(3) MEDICAL SURVEILLANCE.—A program of regular medical examination, monitoring, and surveillance of workers engaged in hazardous waste operations which would expose them to toxic substances.

(4) PROTECTIVE EQUIPMENT.—Requirements for appropriate personal protective equipment, clothing, and respirators for work in hazardous waste operations.

(5) Engineering controls.—Requirements for engineering controls concerning the use of equipment and exposure of workers engaged in hazardous waste operations.

(6) Maximum exposure limits.—Requirements for maximum exposure limitations for workers engaged in hazardous waste operations, including necessary monitoring and assessment procedures.

(7) Informational program.—A program to inform workers engaged in hazardous waste operations of the nature and degree of toxic exposure likely as a result of such hazardous waste operations.

(8) Handling.—Requirements for the handling, transporting, labeling, and disposing of hazardous wastes.

(9) New technology program.—A program for the introduction of new equipment or technologies that will maintain worker protections.

(10) Decontamination procedures.—Procedures for decontamination.

(11) Emergency response.—Requirements for emergency response and protection of workers engaged in hazardous waste operations.

(c) Final Regulations.—Final regulations under subsection (a) shall take effect one year after the date they are promulgated. In promulgating final regulations on standards under subsection (a), the Secretary of Labor shall include each of the provisions listed in paragraphs (1) through (11) of subsection (b) unless the Secretary determines that the evidence in the public record considered as a whole does not support inclusion of any such provision.

(d) Specific Training Standards.—

(1) Offsite instruction; field experience.—Standards promulgated under subsection (a) shall include training standards requiring that general site workers (such as equipment operators, general laborers, and other supervised personnel) engaged in hazardous substance removal or other activities which expose or potentially expose such workers to hazardous substances receive a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained, experienced supervisor, at the time of assignment. The requirements of the preceding sentence shall not apply to any general site worker who has received the equivalent of such training. Workers who may be exposed to unique or special hazards shall be provided additional training.

(2) Training of supervisors.—Standards promulgated under subsection (a) shall include training standards requiring that onsite managers and supervisors directly responsible for the hazardous waste operations (such as foremen) receive the same training as general site workers set forth in paragraph (1) of this subsection and at least eight additional hours of specialized training on managing hazardous waste operations. The requirements of the preceding sentence shall not apply to any person who has received the equivalent of such training.

(3) Certification; enforcement.—Such training standards shall contain provisions for certifying that general site workers,

onsite managers, and supervisors have received the specified training and shall prohibit any individual who has not received the specified training from engaging in hazardous waste operations covered by the standard.

(4) TRAINING OF EMERGENCY RESPONSE PERSONNEL.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to hazardous emergency situations who may be exposed to toxic substances in carrying out their responsibilities.

(e) INTERIM REGULATIONS.—The Secretary of Labor shall issue interim final regulations under this section within 60 days after the enactment of this section which shall provide no less protection under this section for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in subpart C of part 1926 of title 29 of the Code of Federal Regulations. Such interim final regulations shall take effect upon issuance and shall apply until final regulations become effective under subsection (c).

(f) COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES.—Not later than 90 days after the promulgation of final regulations under subsection (a), the Administrator shall promulgate standards identical to those promulgated by the Secretary of Labor under subsection (a). Standards promulgated under this subsection shall apply to employees of State and local governments in each State which does not have in effect an approved State plan under section 18 of the Occupational Safety and Health Act of 1970 providing for standards for the health and safety protection of employees engaged in hazardous waste operations.

(g) GRANT PROGRAM.—

(1) GRANT PURPOSES.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or emergency response may be made under this subsection.

(2) ADMINISTRATION.—Grants under this subsection shall be administered by the National Institute of Environmental Health Sciences.

(3) GRANT RECIPIENTS.—Grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or will be engaged in hazardous waste removal or containment or emergency response operations.

SEC. 127. LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS.

(a) DEFINITION OF INCINERATION VESSEL.—Section 101 of CERCLA is amended by adding the following after paragraph (37):

"(38) The term 'incineration vessel' means any vessel which carries hazardous substances for the purpose of incineration of such substances, so long as such substances or residues of such substances are on board.".

(b) Liability.—Section 107 of CERCLA is amended as follows:

(1) Subsection (a)(3) is amended by inserting "or incineration vessel" after "facility".

(2) Subsection (a)(4) is amended by inserting ", incineration vessels" after "facilities".

(3) Subparagraph (A) of subsection (c)(1) is amended by inserting ", other than an incineration vessel," after "vessel".

(4) Subparagraph (B) of subsection (c)(1) is amended by inserting "other than an incineration vessel," after "other vessel,".

(5) Subparagraph (D) of subsection (c)(1) is amended by inserting "any incineration vessel or" before "any facility".

(c) Financial Responsibility.—Section 108(a) of CERCLA is amended as follows:

(1) Paragraph (1) is amended by inserting "to cover the liability prescribed under paragraph (1) of section 107(a) of this Act" after "whichever is greater)";

(2) Add a new paragraph to read as follows:

"(4) In addition to the financial responsibility provisions of paragraph (1) of this subsection, the President shall require additional evidence of financial responsibility for incineration vessels in such amounts, and to cover such liabilities recognized by law, as the President deems appropriate, taking into account the potential risks posed by incineration and transport for incineration, and any other factors deemed relevant.".

(d) Savings Clause.—Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended by adding the following new subsection at the end thereof:

"(g) Savings Clause.—Nothing in this Act shall restrict, affect or modify the rights of any person (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement of this Act or any permit under this Act.".

(e) Maritime Tort.—Section 107(h) of CERCLA is amended by inserting ", under maritime tort law," after "with this section" and by inserting before the period "or the absence of any physical damage to the proprietary interest of the claimant".

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. POST-CLOSURE LIABILITY PROGRAM STUDY, REPORT TO CONGRESS, AND SUSPENSION OF LIABILITY TRANSFERS.

Subsection (k) of section 107 of CERCLA is amended by adding at the end the following new paragraphs:

"(5) Suspension of liability transfer.—Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection and subsection (j) of section 111 of this Act, no liability shall be transferred to or assumed by the Post-Closure Liability Trust Fund established by section 232 of this Act prior to completion of the study required under paragraph (6) of this subsection, transmission of a report of such study to both Houses of Congress, and authorization of such a transfer or assumption by Act of Congress following receipt of such study and report.

"(6) Study of options for post-closure program.—

"(A) Study.—The Comptroller General shall conduct a study of options for a program for the management of the liabilities associated with hazardous waste treatment, storage, and disposal sites after their closure which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment.

"(B) Program elements.—The program referred to in subparagraph (A) shall be designed to assure each of the following:

"(i) Incentives are created and maintained for the safe management and disposal of hazardous wastes so as to assure protection of human health and the environment.

"(ii) Members of the public will have reasonable confidence that hazardous wastes will be managed and disposed of safely and that resources will be available to address any problems that may arise and to cover costs of long-term monitoring, care, and maintenance of such sites.

"(iii) Persons who are or seek to become owners and operators of hazardous waste disposal facilities will be able to manage their potential future liabilities and to attract the investment capital necessary to build, operate, and close such facilities in a manner which assures protection of human health and the environment.

"(C) Assessments.—The study under this paragraph shall include assessments of treatment, storage, and disposal facilities which have been or are likely to be issued a permit under section 3005 of the Solid Waste Disposal Act and the likelihood of future insolvency on the part of owners and operators of such facilities. Separate assessments shall be made for different classes of facilities and for different classes of land disposal facilities and shall include but not be limited to—

"(i) the current and future financial capabilities of facility owners and operators;

"(ii) the current and future costs associated with facilities, including the costs of routine monitoring and maintenance, compliance monitoring, corrective action, natural resource damages, and liability for damages to third parties; and

"(iii) the availability of mechanisms by which owners and operators of such facilities can assure that current and future costs, including post-closure costs, will be financed.

"(D) Procedures.—In carrying out the responsibilities of this paragraph, the Comptroller General shall consult with the Administrator, the Secretary of Commerce, the Secretary of the Treasury, and the heads of other appropriate Federal agencies.

"(E) Consideration of options.—In conducting the study under this paragraph, the Comptroller General shall consider various mechanisms and combinations of mecha-

nisms to complement the policies set forth in the Hazardous and Solid Waste Amendments of 1984 to serve the purposes set forth in subparagraph (B) and to assure that the current and future costs associated with hazardous waste facilities, including post-closure costs, will be adequately financed and, to the greatest extent possible, borne by the owners and operators of such facilities. Mechanisms to be considered include, but are not limited to—

"(i) revisions to closure, post-closure, and financial responsibility requirements under subtitles C and I of the Solid Waste Disposal Act;

"(ii) voluntary risk pooling by owners and operators;

"(iii) legislation to require risk pooling by owners and operators;

"(iv) modification of the Post-Closure Liability Trust Fund previously established by section 232 of this Act, and the conditions for transfer of liability under this subsection, including limiting the transfer of some or all liability under this subsection only in the case of insolvency of owners and operators;

"(v) private insurance;

"(vi) insurance provided by the Federal Government;

"(vii) coinsurance, reinsurance, or pooled-risk insurance, whether provided by the private sector or provided or assisted by the Federal Government; and

"(viii) creation of a new program to be administered by a new or existing Federal agency or by a federally chartered corporation.

"(F) RECOMMENDATIONS.—The Comptroller General shall consider options for funding any program under this section and shall, to the extent necessary, make recommendations to the appropriate committees of Congress for additional authority to implement such program.".

SEC. 202. HAZARDOUS MATERIALS TRANSPORTATION.

(a) REGULATION REQUIREMENT.—Section 306(a) of CERCLA is amended (1) by striking out "within ninety days after the date of enactment of this Act" and inserting in lieu thereof "within 30 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986" and (2) by inserting "and regulated" before "as a hazardous material".

(b) CONFORMING AMENDMENT.—Section 306(b) of CERCLA is amended by inserting "and regulation" after "prior to the effective date of the listing".

SEC. 203. STATE PROCEDURAL REFORM.

(a) IN GENERAL.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 309. ACTIONS UNDER STATE LAW FOR DAMAGES FROM EXPOSURE TO HAZARDOUS SUBSTANCES.

"(a) STATE STATUTES OF LIMITATIONS FOR HAZARDOUS SUBSTANCE CASES.—

"(1) EXCEPTION TO STATE STATUTES.—In the case of any action brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any haz-

ardous substance, or pollutant or contaminant, released into the environment from a facility, if the applicable limitations period for such action (as specified in the State statute of limitations or under common law) provides a commencement date which is earlier than the federally required commencement date, such period shall commence at the federally required commencement date in lieu of the date specified in such State statute.

"(2) STATE LAW GENERALLY APPLICABLE.—Except as provided in paragraph (1), the statute of limitations established under State law shall apply in all actions brought under State law for personal injury, or property damages, which are caused or contributed to by exposure to any hazardous substance, or pollutant or contaminant, released into the environment from a facility.

"(3) ACTIONS UNDER SECTION 107.—Nothing in this section shall apply with respect to any cause of action brought under section 107 of this Act.

"(b) DEFINITIONS.—As used in this section—

"(1) TITLE I TERMS.—The terms used in this section shall have the same meaning as when used in title I of this Act.

"(2) APPLICABLE LIMITATIONS PERIOD.—The term 'applicable limitations period' means the period specified in a statute of limitations during which a civil action referred to in subsection (a)(1) may be brought.

"(3) COMMENCEMENT DATE.—The term 'commencement date' means the date specified in a statute of limitations as the beginning of the applicable limitations period.

"(4) FEDERALLY REQUIRED COMMENCEMENT DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'federally required commencement date' means the date the plaintiff knew (or reasonably should have known) that the personal injury or property damages referred to in subsection (a)(1) were caused or contributed to by the hazardous substance or pollutant or contaminant concerned.

"(B) SPECIAL RULES.—In the case of a minor or incompetent plaintiff, the term 'federally required commencement date' means the later of the date referred to in subparagraph (A) or the following:

"(i) In the case of a minor, the date on which the minor reaches the age of majority, as determined by State law, or has a legal representative appointed.

"(ii) In the case of an incompetent individual, the date on which such individual becomes competent or has had a legal representative appointed.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall take effect with respect to actions brought after December 11, 1980.

SEC. 204. CONFORMING AMENDMENT TO FUNDING PROVISIONS.

(a) HAZARDOUS SUBSTANCES SUPERFUND.—Section 221(a) of CERCLA is amended by striking out "Hazardous Substance Response Trust Fund" and inserting in lieu thereof "Hazardous Substances Superfund".

(b) Cross Reference to Funding Provisions.—Section 221(c) of CERCLA is amended to read as follows:

"(c) Expenditures From Trust Fund.—Amounts in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954 shall be available for expenditure only as provided in section 111 of this Act.".

SEC. 205. CLEANUP OF PETROLEUM FROM LEAKING UNDERGROUND STORAGE TANKS.

(a) Definition of Petroleum.—Section 9001(2)(B) of the Solid Waste Disposal Act is amended by striking out all that follows "petroleum" and inserting in lieu thereof a period. Section 9001 of such Act is amended by adding at the end thereof the following:

"(8) The term 'petroleum' means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).".

(b) State Inventories.—Section 9002 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) State Inventories.—Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after the enactment of the Superfund Amendments and Reauthorization Act of 1986.".

(c) Financial Responsibility.—

(1) Requirements.—Section 9003(c) of the Solid Waste Disposal Act is amended by striking "and" at the end of paragraph (4), striking the period at the end of paragraph (5) and substituting "; and" and by adding the following new paragraph at the end thereof:

"(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.".

(2) Conforming amendment.—Section 9003(d) of such Act is amended by striking out paragraph (1) and renumbering paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(3) Other methods.—Section 9003(d)(1) of such Act (as redesignated by paragraph (2) of this subsection) is amended by striking out "or" after "credit," and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satisfactory to the Administrator.".

(4) Section 9003(d) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount

of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than $1,000,000 for each occurrence with an appropriate aggregate requirement.

"(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

"(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

"(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

"(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

"(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

"(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

"(v) Such other factors as the Administrator deems pertinent.

"(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

"(i) steps are being taken to form a risk retention group for such class of tanks; or

"(ii) such State is taking steps to establish a fund pursuant to section 9004(c)(1) of this Act to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).".

(d) EPA RESPONSE PROGRAM.—Section 9003 of the Solid Waste Disposal Act is amended by adding after subsection (g) the following new subsection:

"(h) EPA RESPONSE PROGRAM FOR PETROLEUM.—

"(1) Before regulations.—Before the effective date of regulations under subsection (c), the Administrator (or a State pursuant to paragraph (7)) is authorized to—

"(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

"(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

"(2) After regulations.—Following the effective date of regulations under subsection (c), all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

"(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

"(i) an owner or operator of the tank concerned,

"(ii) subject to such corrective action regulations, and

"(iii) capable of carrying out such corrective action properly.

"(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

"(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund are necessary to assure an effective corrective action.

"(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 9006 or with the order of a State under this subsection to comply with the corrective action regulations.

"(3) Priority of corrective actions.—The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

"(4) Corrective action orders.—The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4). A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 9004 of this subtitle. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 9006.

"(5) Allowable corrective actions.—The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

"(6) Recovery of costs.—

"(A) In general.—Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

"(B) Recovery.—In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5).

"(C) Effect on liability.—

"(i) No transfers of liability.—No indemnification, hold harmless, or similar agreement or convey-

ance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

"(ii) NO BAR TO CAUSE OF ACTION.—Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

"(D) FACILITY.—For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

"(7) STATE AUTHORITIES.—

"(A) GENERAL.—A State may exercise the authorities in paragraphs (1) and (2) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and including the authorities of paragraphs (4), (6), and (8) of this subsection if—

"(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

"(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Leaking Underground Storage Tank Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

"(B) COST SHARE.—Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

"(8) EMERGENCY PROCUREMENT POWERS.—Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

"(9) DEFINITION OF OWNER.—As used in this subsection, the term 'owner' does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and

marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

"(10) DEFINITION OF EXPOSURE ASSESSMENT.—As used in this subsection, the term 'exposure assessment' means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

"(11) FACILITIES WITHOUT FINANCIAL RESPONSIBILITY.—At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Leaking Underground Storage Tank Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 9006 of this subtitle to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.".

(e) FINANCIAL RESPONSIBILITY IN STATE PROGRAMS.—

(1) Section 9004(c)(1) of the Solid Waste Disposal Act is amended by striking out "financed by fees on tank owners and operators and".

(2) Section 9004(c)(2) of the Solid Waste Disposal Act is amended by striking out "or" after "credit," in the first sentence and by striking out the period at the end thereof and inserting in lieu thereof the following: "or any other method satis-

factory to the Administrator.". Such section is further amended by adding after the word "terms" in the second sentence the following: "including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 9003(d)(5)".

(f) AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS.—

(1) Section 9005(a) of the Solid Waste Disposal Act is amended by inserting the words "taking any corrective action" after the word "study", inserting the words "acting pursuant to subsection (h)(7) of section 9003 or" after the words "or representative of a State", striking the word "and" before the words "permit such officer", and inserting the words "and permit such officer to have access for corrective action" after the words "relating to such tanks" in the first sentence thereof. Such section is further amended by inserting the words "taking corrective action," after the word "study," in the second sentence thereof.

(2) Section 9005(a) of the Solid Waste Disposal Act is amended by striking the word "and" at the end of paragraph (2), striking out the period at the end of paragraph (3) and inserting "; and", and adding the following new paragraph at the end thereof—

"(4) to take corrective action.".

(3) Section 9005 of the Solid Waste Disposal Act is amended by changing the heading thereof to read as follows—

"INSPECTIONS, MONITORING, TESTING AND CORRECTIVE ACTION".

(g) COORDINATION WITH OTHER LAWS.—Section 9008 of the Solid Waste Disposal Act is amended to read as follows:

"STATE AUTHORITY

"SEC. 9008. Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.".

(h) POLLUTION LIABILITY INSURANCE.—

(1) STUDY.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act and the operation of the Water Quality Insurance Syndicate.

(2) Report.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events.

(i) CRIMINAL PENALTIES RELATING TO USED OIL.—Subtitle C of the Solid Waste Disposal Act is amended as follows:

(1) In paragraphs (4) and (5) of section 3008(d) after "hazardous waste" insert "or any used oil not identified or listed as a hazardous waste under this subtitle".

(2) Delete "accompanied by a manifest; ; or" in paragraph (5) and insert "accompanied by a manifest;".

(3) Insert "; or" after paragraph (6).

(4) Add the following new paragraph after paragraph (6):

"(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under subtitle C of the Solid Waste Disposal Act—

"(A) in knowing violation of any material condition or requirement of a permit under this subtitle C; or

"(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this Act;".

(5) In section 3008(e):

(A) Insert "or used oil not identified or listed as a hazardous waste under this subtitle" immediately after "this subtitle".

(B) Strike "or" immediately before "(6)".

(C) Insert ", or (7)" immediately after "(6)".

(j) STATE PROGRAMS FOR USED OIL.—Section 3006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(h) STATE PROGRAMS FOR USED OIL.—In the case of used oil which is not listed or identified under this subtitle as a hazardous waste but which is regulated under section 3014, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subtitle.".

SEC. 206. CITIZENS SUITS.

Title III of CERCLA is amended by adding the following new section after section 309:

"SEC. 310. CITIZENS SUITS.

"(a) AUTHORITY TO BRING CIVIL ACTIONS.—Except as provided in subsections (d) and (e) of this section and in section 113(h) (relating to timing of judicial review), any person may commence a civil action on his own behalf—

"(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition,

requirement, or order which has become effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities); or

"(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of section 311 (relating to research, development, and demonstration).

"(b) VENUE.—

"(1) ACTIONS UNDER SUBSECTION (a)(1).—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred.

"(2) ACTIONS UNDER SUBSECTION (a)(2).—Any action brought under subsection (a)(2) may be brought in the United States District Court for the District of Columbia.

"(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a)(1) to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) to order the President or other officer to perform the act or duty concerned.

"(d) RULES APPLICABLE TO SUBSECTION (a)(1) ACTIONS.—

"(1) NOTICE.—No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

"(A) The President.

"(B) The State in which the alleged violation occurs.

"(C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

"(2) DILIGENT PROSECUTION.—No action may be commenced under paragraph (1) of subsection (a) if the President has commenced and is diligently prosecuting an action under this Act, or under the Solid Waste Disposal Act to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

"(e) RULES APPLICABLE TO SUBSECTION (a)(2) ACTIONS.—No action may be commenced under paragraph (2) of subsection (a) before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation.

"(f) Costs.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(g) Intervention.—In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see section 113.

"(h) Other Rights.—This Act does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in section 113(h) or as otherwise provided in section 309 (relating to actions under State law).

"(i) Definitions.—The terms used in this section shall have the same meanings as when used in title I.".

SEC. 207. INDIAN TRIBES.

(a) Definition.—For definition of Indian tribe, see the amendments made by section 101 of this Act.

(b) Future Maintenance and Cost Sharing.—Section 104(c)(3) of CERCLA is amended by adding at the end thereof the following: "In the case of remedial action to be taken on land or water held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe (if such land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph for assurances regarding future maintenance and cost-sharing shall not apply, and the President shall provide the assurance required by this paragraph regarding the availability of a hazardous waste disposal facility.".

(c) Liability.—Section 107 of CERCLA is amended as follows:

(1) In subsection (a) by inserting "or an Indian tribe" after "State";

(2) In subsection (f):

(A) Insert after "State" the third time that word appears the following: "and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation".

(B) Insert "or Indian tribe" after "State" the fourth time that word appears.

(C) Add before the period at the end of the first sentence the following: ", so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe".

(D) Insert "or the Indian tribe" after "State government".

(3) In subsection (i) insert "or Indian tribe" after "State" the first time it appears.

(4) In subsection (j) insert "or Indian tribe" after "State" the first time it appears.

(d) Natural Resources Claims, Delegation, Etc.—Section 111 of CERCLA is amended as follows:

(1) In subsection (b), insert before the period at the end thereof the following: ", or by any Indian tribe or by the United States acting on behalf of any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation";

(2) In subsection (c)(2) insert "or Indian tribe" after "State".

(3) In subsection (f) insert "or Indian tribe" after "State"; and

(4) In subsection (i) insert after "State," the following: "and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation,".

(e) Treatment of Tribes Generally.—Title I of CERCLA is amended by adding the following new section after section 125:

"SEC. 126. INDIAN TRIBES.

"(a) Treatment Generally.—The governing body of an Indian tribe shall be afforded substantially the same treatment as a State with respect to the provisions of section 103(a) (regarding notification of releases), section 104(c)(2) (regarding consultation on remedial actions), section 104(e) (regarding access to information), section 104(i) (regarding health authorities) and section 105 (regarding roles and responsibilities under the national contingency plan and submittal of priorities for remedial action, but not including the provision regarding the inclusion of at least one facility per State on the National Priorities List).

"(b) Community Relocation.—Should the President determine that proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred in by the affected tribal government before relocation shall occur. The President, in cooperation with the Secretary of the Interior, shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe.

"(c) Study.—The President shall conduct a survey, in consultation with the Indian tribes, to determine the extent of hazardous waste sites on Indian lands. Such survey shall be included within a report which shall make recommendations on the program needs of tribes under this Act, with particular emphasis on how tribal participation in the administration of such programs can be maximized. Such report shall be submitted to Congress along with the President's budget request for fiscal year 1988.

"(d) Limitation.—Notwithstanding any other provision of this Act, no action under this Act by an Indian tribe shall be barred until the later of the following:

"(1) The applicable period of limitations has expired.

"(2) 2 years after the United States, in its capacity as trustee for the tribe, gives written notice to the governing body of the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the time limitations specified in this Act.".

SEC. 208. INSURABILITY STUDY.

Section 301 of CERCLA is amended by adding the following new subsection at the end thereof:

"(g) Insurability Study.—

"(1) Study by comptroller general.—The Comptroller General of the United States, in consultation with the persons described in paragraph (2), shall undertake a study to determine the insurability, and effects on the standard of care, of the liability of each of the following:

"(A) Persons who generate hazardous substances: liability for costs and damages under this Act.

"(B) Persons who own or operate facilities: liability for costs and damages under this Act.

"(C) Persons liable for injury to persons or property caused by the release of hazardous substances into the environment.

"(2) Consultation.—In conducting the study under this subsection, the Comptroller General shall consult with the following:

"(A) Representatives of the Administrator.

"(B) Representatives of persons described in subparagraphs (A) through (C) of the preceding paragraph.

"(C) Representatives (i) of groups or organizations comprised generally of persons adversely affected by releases or threatened releases of hazardous substances and (ii) of groups organized for protecting the interests of consumers.

"(D) Representatives of property and casualty insurers.

"(E) Representatives of reinsurers.

"(F) Persons responsible for the regulation of insurance at the State level.

"(3) Items evaluated.—The study under this section shall include, among other matters, an evaluation of the following:

"(A) Current economic conditions in, and the future outlook for, the commercial market for insurance and reinsurance.

"(B) Current trends in statutory and common law remedies.

"(C) The impact of possible changes in traditional standards of liability, proof, evidence, and damages on existing statutory and common law remedies.

"(D) The effect of the standard of liability and extent of the persons upon whom it is imposed under this Act on the protection of human health and the environment and on

the availability, underwriting, and pricing of insurance coverage.

"(E) Current trends, if any, in the judicial interpretation and construction of applicable insurance contracts, together with the degree to which amendments in the language of such contracts and the description of the risks assumed, could affect such trends.

"(F) The frequency and severity of a representative sample of claims closed during the calendar year immediately preceding the enactment of this subsection.

"(G) Impediments to the acquisition of insurance or other means of obtaining liability coverage other than those referred to in the preceding subparagraphs.

"(H) The effects of the standards of liability and financial responsibility requirements imposed pursuant to this Act on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies, as well as waste generation minimization.

"(4) SUBMISSION.—The Comptroller General shall submit a report on the results of the study to Congress with appropriate recommendations within 12 months after the enactment of this subsection.".

SEC. 209. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

(a) PURPOSE.—The purposes of this section are as follows:

(1) To establish a comprehensive and coordinated Federal program of research, development, demonstration, and training for the purpose of promoting the development of alternative and innovative treatment technologies that can be used in response actions under the CERCLA program, to provide incentives for the development and use of such technologies, and to improve the scientific capability to assess, detect and evaluate the effects on and risks to human health from hazardous substances.

(2) To establish a basic university research and education program within the Department of Health and Human Services and a research, demonstration, and training program within the Environmental Protection Agency.

(3) To reserve certain funds from the Hazardous Substance Trust Fund to support a basic research program within the Department of Health and Human Services, and an applied and developmental research program within the Environmental Protection Agency.

(4) To enhance the Environmental Protection Agency's internal research capabilities related to CERCLA activities, including site assessment and technology evaluation.

(5) To provide incentives for the development of alternative and innovative treatment technologies in a manner that supplements or coordinates with, but does not compete with or duplicate, private sector development of such technologies.

(b) AMENDMENT OF CERCLA.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 311. RESEARCH, DEVELOPMENT, AND DEMONSTRATION.

"(a) HAZARDOUS SUBSTANCE RESEARCH AND TRAINING.—

"(1) AUTHORITIES OF SECRETARY.—The Secretary of Health and Human Services (hereinafter in this subsection referred to as the Secretary), in consultation with the Administrator, shall establish and support a basic research and training program (through grants, cooperative agreements, and contracts) consisting of the following:

"(A) Basic research (including epidemiologic and ecologic studies) which may include each of the following:

"(i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.

"(ii) Methods to assess the risks to human health presented by hazardous substances.

"(iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

"(B) Training, which may include each of the following:

"(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.

"(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.

"(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private sectors and to effectuate the purposes of this Act.

"(2) DIRECTOR OF NIEHS.—The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.

"(3) RECIPIENTS OF GRANTS, ETC.—A grant, cooperative agreement, or contract may be made or entered into under paragraph (1) with an accredited institution of higher education. The institution may carry out the research or training under the grant, cooperative agreement, or contract through contracts, including contracts with any of the following:

"(A) Generators of hazardous wastes.

"(B) Persons involved in the detection, assessment, evaluation, and treatment of hazardous substances.

"(C) Owners and operators of facilities at which hazardous substances are located.

"(D) State and local governments.

"(4) PROCEDURES.—In making grants and entering into cooperative agreements and contracts under this subsection, the Secretary shall act through the Director of the National Institute for Environmental Health Sciences. In considering the alloca-

tion of funds for training purposes, the Director shall ensure that at least one grant, cooperative agreement, or contract shall be awarded for training described in each of clauses (i), (ii), and (iii) of paragraph (1)(B). Where applicable, the Director may choose to operate training activities in cooperation with the Director of the National Institute for Occupational Safety and Health. The procedures applicable to grants and contracts under title IV of the Public Health Service Act shall be followed under this subsection.

"(5) ADVISORY COUNCIL.—To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the 'Advisory Council') which shall consist of representatives of the following:

"(A) The relevant Federal agencies.

"(B) The chemical industry.

"(C) The toxic waste management industry.

"(D) Institutions of higher education.

"(E) State and local health and environmental agencies.

"(F) The general public.

"(6) PLANNING.—Within nine months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).

"(b) ALTERNATIVE OR INNOVATIVE TREATMENT TECHNOLOGY RESEARCH AND DEMONSTRATION PROGRAM.—

"(1) ESTABLISHMENT.—The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the 'program') which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.

"(2) ADMINISTRATION.—The program shall be administered by the Administrator, acting through an office of technology demonstration and shall be coordinated with programs carried out by the Office of Solid Waste and Emergency Response and the Office of Research and Development.

"(3) Contracts and grants.—In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954. The Administrator shall, to the maximum extent possible, enter into appropriate cost sharing arrangements under this subsection.

"(4) Use of sites.—In carrying out the program, the Administrator may arrange for the use of sites at which a response may be undertaken under section 104 for the purposes of carrying out research, testing, evaluation, development, and demonstration projects. Each such project shall be carried out under such terms and conditions as the Administrator shall require to assure the protection of human health and the environment and to assure adequate control by the Administrator of the research, testing, evaluation, development, and demonstration activities at the site.

"(5) Demonstration assistance.—

"(A) Program components.—The demonstration assistance program shall include the following:

"(i) The publication of a solicitation and the evaluation of applications for demonstration projects utilizing alternative or innovative technologies.

"(ii) The selection of sites which are suitable for the testing and evaluation of innovative technologies.

"(iii) The development of detailed plans for innovative technology demonstration projects.

"(iv) The supervision of such demonstration projects and the providing of quality assurance for data obtained.

"(v) The evaluation of the results of alternative innovative technology demonstration projects and the determination of whether or not the technologies used are effective and feasible.

"(B) Solicitation.—Within 90 days after the date of the enactment of this section, and no less often than once every 12 months thereafter, the Administrator shall publish a solicitation for innovative or alternative technologies at a stage of development suitable for full-scale demonstrations at sites at which a response action may be undertaken under section 104. The purpose of any such project shall be to demonstrate the use of an alternative or innovative treatment technology with respect to hazardous substances or pollutants or contaminants which are located at the site or which are to be removed from the site. The solicitation notice shall prescribe information to be included in the application, including technical and economic data derived from the applicant's own research and development efforts, and other information sufficient to permit the Administrator to assess the technology's potential and the types of remedial action to which it may be applicable.

"(C) Applications.—Any person and any public or private nonprofit entity may submit an application to the Ad-

ministrator in response to the solicitation. The application shall contain a proposed demonstration plan setting forth how and when the project is to be carried out and such other information as the Administrator may require.

"(D) PROJECT SELECTION.—In selecting technologies to be demonstrated, the Administrator shall fully review the applications submitted and shall consider at least the criteria specified in paragraph (7). The Administrator shall select or refuse to select a project for demonstration under this subsection within 90 days of receiving the completed application for such project. In the case of a refusal to select the project, the Administrator shall notify the applicant within such 90-day period of the reasons for his refusal.

"(E) SITE SELECTION.—The Administrator shall propose 10 sites at which a response may be undertaken under section 104 to be the location of any demonstration project under this subsection within 60 days after the close of the public comment period. After an opportunity for notice and public comment, the Administrator shall select such sites and projects. In selecting any such site, the Administrator shall take into account the applicant's technical data and preferences either for onsite operation or for utilizing the site as a source of hazardous substances or pollutants or contaminants to be treated offsite.

"(F) DEMONSTRATION PLAN.—Within 60 days after the selection of the site under this paragraph to be the location of a demonstration project, the Administrator shall establish a final demonstration plan for the project, based upon the demonstration plan contained in the application for the project. Such plan shall clearly set forth how and when the demonstration project will be carried out.

"(G) SUPERVISION AND TESTING.—Each demonstration project under this subsection shall be performed by the applicant, or by a person satisfactory to the applicant, under the supervision of the Administrator. The Administrator shall enter into a written agreement with each applicant granting the Administrator the responsibility and authority for testing procedures, quality control, monitoring, and other measurements necessary to determine and evaluate the results of the demonstration project. The Administrator may pay the costs of testing, monitoring, quality control, and other measurements required by the Administrator to determine and evaluate the results of the demonstration project, and the limitations established by subparagraph (J) shall not apply to such costs.

"(H) PROJECT COMPLETION.—Each demonstration project under this subsection shall be completed within such time as is established in the demonstration plan.

"(I) EXTENSIONS.—The Administrator may extend any deadline established under this paragraph by mutual agreement with the applicant concerned.

"(J) FUNDING RESTRICTIONS.—The Administrator shall not provide any Federal assistance for any part of a full-scale field demonstration project under this subsection to

any applicant unless such applicant can demonstrate that it cannot obtain appropriate private financing on reasonable terms and conditions sufficient to carry out such demonstration project without such Federal assistance. The total Federal funds for any full-scale field demonstration project under this subsection shall not exceed 50 percent of the total cost of such project estimated at the time of the award of such assistance. The Administrator shall not expend more than $10,000,000 for assistance under the program in any fiscal year and shall not expend more than $3,000,000 for any single project.

"(6) FIELD DEMONSTRATIONS.—In carrying out the program, the Administrator shall initiate or cause to be initiated at least 10 field demonstration projects of alternative or innovative treatment technologies at sites at which a response may be undertaken under section 104, in fiscal year 1987 and each of the succeeding three fiscal years. If the Administrator determines that 10 field demonstration projects under this subsection cannot be initiated consistent with the criteria set forth in paragraph (7) in any of such fiscal years, the Administrator shall transmit to the appropriate committees of Congress a report explaining the reasons for his inability to conduct such demonstration projects.

"(7) CRITERIA.—In selecting technologies to be demonstrated under this subsection, the Administrator shall, consistent with the protection of human health and the environment, consider each of the following criteria:

"(A) The potential for contributing to solutions to those waste problems which pose the greatest threat to human health, which cannot be adequately controlled under present technologies, or which otherwise pose significant management difficulties.

"(B) The availability of technologies which have been sufficiently developed for field demonstration and which are likely to be cost-effective and reliable.

"(C) The availability and suitability of sites for demonstrating such technologies, taking into account the physical, biological, chemical, and geological characteristics of the sites, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in such a manner as to assure the protection of human health and the environment.

"(D) The likelihood that the data to be generated from the demonstration project at the site will be applicable to other sites.

"(8) TECHNOLOGY TRANSFER.—In carrying out the program, the Administrator shall conduct a technology transfer program including the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative treatment technologies for response actions. The Administrator shall establish and maintain a central reference library for such information. The information maintained by the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5 of

the United States Code and section 1905 of title 18 of the United States Code, and to other Government agencies in a manner that will facilitate its dissemination; except, that upon a showing satisfactory to the Administrator by any person that any information or portion thereof obtained under this subsection by the Administrator directly or indirectly from such person, would, if made public, divulge—

"(A) trade secrets; or

"(B) other proprietary information of such person,

the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18 of the United States Code. This subsection is not authority to withhold information from Congress or any committee of Congress upon the request of the chairman of such committee.

"(9) TRAINING.—The Administrator is authorized and directed to carry out, through the office of technology demonstration, a program of training and an evaluation of training needs for each of the following:

"(A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

"(B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

"(10) DEFINITION.—For purposes of this subsection, the term 'alternative or innovative treatment technologies' means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

"(c) HAZARDOUS SUBSTANCE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

"(d) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—

"(1) GRANT PROGRAM.—The Administrator shall make grants to institutions of higher learning to establish and operate not fewer than 5 hazardous substance research centers in the United States. In carrying out the program under this subsection, the Administrator should seek to have established and operated 10 hazardous substance research centers in the United States.

"(2) RESPONSIBILITIES OF CENTERS.—The responsibilities of each hazardous substance research center established under this subsection shall include, but not be limited to, the conduct of research and training relating to the manufacture, use, transportation, disposal, and management of hazardous substances and publication and dissemination of the results of such research.

"(3) APPLICATIONS.—Any institution of higher learning interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The hazardous substance research center shall be located in a State which is representative of the needs of the region in which such State is located for improved hazardous waste management.

"(B) The grant recipient shall be located in an area which has experienced problems with hazardous substance management.

"(C) There is available to the grant recipient for carrying out this subsection demonstrated research resources.

"(D) The capability of the grant recipient to provide leadership in making national and regional contributions to the solution of both long-range and immediate hazardous substance management problems.

"(E) The grant recipient shall make a commitment to support ongoing hazardous substance research programs with budgeted institutional funds of at least $100,000 per year.

"(F) The grant recipient shall have an interdisciplinary staff with demonstrated expertise in hazardous substance management and research.

"(G) The grant recipient shall have a demonstrated ability to disseminate results of hazardous substance research and educational programs through an interdisciplinary continuing education program.

"(H) The projects which the grant recipient proposes to carry out under the grant are necessary and appropriate.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional hazardous substance research center and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall not exceed 80 percent of the costs of establishing and operating the regional hazardous substance re-

search center and related research activities carried out by the grant recipient.

"(7) LIMITATION ON USE OF FUNDS.—No funds made available to carry out this subsection shall be used for acquisition of real property (including buildings) or construction of any building.

"(8) ADMINISTRATION THROUGH THE OFFICE OF THE ADMINISTRATOR.—Administrative responsibility for carrying out this subsection shall be in the Office of the Administrator.

"(9) EQUITABLE DISTRIBUTION OF FUNDS.—The Administrator shall allocate funds made available to carry out this subsection equitably among the regions of the United States.

"(10) TECHNOLOGY TRANSFER ACTIVITIES.—Not less than five percent of the funds made available to carry out this subsection for any fiscal year shall be available to carry out technology transfer activities.

"(e) REPORT TO CONGRESS.—At the time of the submission of the annual budget request to Congress, the Administrator shall submit to the appropriate committees of the House of Representatives and the Senate and to the advisory council established under subsection (a), a report on the progress of the research, development, and demonstration program authorized by subsection (b), including an evaluation of each demonstration project completed in the preceding fiscal year, findings with respect to the efficacy of such demonstrated technologies in achieving permanent and significant reductions in risk from hazardous wastes, the costs of such demonstration projects, and the potential applicability of, and projected costs for, such technologies at other hazardous substance sites.

"(f) SAVING PROVISION.—Nothing in this section shall be construed to affect the provisions of the Solid Waste Disposal Act.

"(g) SMALL BUSINESS PARTICIPATION.—The Administrator shall ensure, to the maximum extent practicable, an adequate opportunity for small business participation in the program established by subsection (b).".

SEC. 210. POLLUTION LIABILITY INSURANCE.

CERCLA is amended by adding the following new title at the end thereof:

"TITLE IV—POLLUTION INSURANCE

"SEC. 401. DEFINITIONS.

"As used in this title—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of hazardous substances or pollutants or contaminants.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

"SEC. 402. STATE LAWS; SCOPE OF TITLE.

"(a) STATE LAWS.—Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this title, including recognition or qualification of risk retention groups or purchasing groups.

"(b) SCOPE OF TITLE.—The authority to offer or to provide insurance under this title shall be limited to coverage of pollution liability risks and this title does not authorize a risk retention group or purchasing group to provide coverage of any other line of insurance.

"SEC. 403. RISK RETENTION GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a risk retention group shall be exempt from the following:

"(1) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(2) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(3) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(4) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(b) EXCEPTIONS.—

"(1) STATE LAWS GENERALLY APPLICABLE.—Nothing in subsection (a) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(2) State regulations not subject to exemption.—Subsection (a) shall not apply to any State law which requires a risk retention group to do any of the following:

"(A) Comply with the unfair claim settlement practices law of the State.

"(B) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(C) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(D) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(E) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(F) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(G) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(H) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (G).

"(c) Application of Exemptions.—The exemptions specified in subsection (a) apply to—

"(1) pollution liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of pollution liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(d) Agents or Brokers.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not

impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 404. PURCHASING GROUPS.

"(a) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(1) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(2) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(3) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection.

"(4) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(5) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(6) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(7) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(8) A State law, rule, or order which otherwise discriminate against a purchasing group or any of its members.

"(b) APPLICATION OF EXEMPTIONS.—The exemptions specified in subsection (a) apply to the following:

"(1) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(A) a purchasing group; or

"(B) any person who is a member of a purchasing group.

"(2) The sale of any one of the following to a purchasing group or a member of the group:

"(A) Pollution liability insurance and comprehensive general liability coverage.

"(B) Insurance related services.

"(C) Management services.

"(c) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"SEC. 405. APPLICABILITY OF SECURITIES LAWS.

"(a) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(1) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(2) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(b) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(c) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.".

SEC. 211. DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) IN GENERAL.—(1) Title 10, United States Code, is amended—

(A) by redesignating section 2701 as section 2721; and

(B) by inserting after chapter 159 the following new chapter:

"CHAPTER 160—ENVIRONMENTAL RESTORATION

"Sec.
"2701. Environmental restoration program.
"2702. Research, development, and demonstration program.
"2703. Environmental restoration transfer account.
"2704. Commonly found unregulated hazardous substances.
"2705. Notice of environmental restoration activities.
"2706. Annual report to Congress.
"2707. Definitions.

"§2701. Environmental restoration program

"(a) ENVIRONMENTAL RESTORATION PROGRAM.—

"(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the 'Defense Environmental Restoration Program'.

"(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.).

"(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

"(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

"(b) PROGRAM GOALS.—Goals of the program shall include the following:

"(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

"(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an im-

minent and substantial endangerment to the public health or welfare or to the environment.

"(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

"(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

"(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

"(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

"(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

"(C) Each vessel owned or operated by the Department of Defense.

"(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

"(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

"(d) SERVICES OF OTHER AGENCIES.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

"(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

"§ 2702. Research, development, and demonstration program

"(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include re-

search, development, and demonstration with respect to each of the following:

"(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

"(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

"(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

"(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

"(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

"(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

"(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

"(d) INFORMATION COLLECTION AND DISSEMINATION.—

"(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

"(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

"§ 2703. Environmental restoration transfer account

"(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

"(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the 'Defense Environmental Restoration Account' (hereinafter in this section re-

ferred to as the 'transfer account'). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other provision of law shall be appropriated to the transfer account.

"(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

"(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

"(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

"(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter or environmental restoration functions under any other provision of law.

"(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

"(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

"§ 2704. Commonly found unregulated hazardous substances

"(a) NOTICE TO HHS.—

"(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

"(2) DEFINITION.—In this subsection, the term 'unregulated hazardous substance' means a hazardous substance—

"(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

"(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

"(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

"(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of signifi-

cant human exposure for the substance and the associated acute, subacute, and chronic health effects.

"(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

"(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

"(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

"(d) EPA HEALTH ADVISORIES.—

"(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

"(A) for which no advisory exists;

"(B) which is found to threaten drinking water; and

"(C) which is emanating from a facility under the jurisdiction of the Secretary.

"(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

"(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

"(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

"(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency of Toxic Substances and Disease Registry of the Department

of Health and Human Services established under section 104(i) of CERCLA.

"§ 2705. Notice of environmental restoration activities

"(a) Expedited Notice.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

"(1) The discovery of releases or threatened releases of hazardous substances at the facility.

"(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

"(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

"(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

"(b) Comment by EPA and State and Local Authorities.—

"(1) Release notices.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

"(2) Proposals for response actions.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

"(c) Technical Review Committee.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

"§ 2706. Annual report to Congress

"(a) Report on Progress in Implementation.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

"(b) Matters To Be Included.—Each such report shall include the following:

"(1) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

"(2) The status of response actions contemplated or undertaken at each such facility.

"(3) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

"(4) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.

"§ 2707. Definitions

"In this chapter:

"(1) The terms 'environment', 'facility', 'hazardous substance', 'person', 'release', 'removal', 'response', 'disposal', and 'hazardous waste' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

"(2) The term 'Administrator' means the Administrator of the Environmental Protection Agency.".

(2) The tables of chapters at the beginning of subtitle A, and at the beginning of part IV of subtitle A, of such title are each amended by inserting after the item relating to chapter 159 the following new item:

"160. Environmental Restoration .... 2701".

(3) The table of sections at the beginning of chapter 161 of such title is amended to reflect the redesignation made by paragraph (1)(A).

(b) MILITARY CONSTRUCTION PROJECTS.—(1) Chapter 169 of title 10, United States Code, is amended by inserting at the end of subchapter I the following new section:

"§ 2810. Construction projects for environmental response actions

"(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

"(A) the justification for the project and the current estimate of the cost of the project; and

"(B) the justification for carrying out the project under this section.

"(2) The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

"(c) In this section, the term 'response action' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).".

(2) The table of sections at the beginning of subchapter I of such chapter is amended by adding at the end thereof the following new item:

"2810. Construction projects for environmental response actions.".

(c) EFFECTIVE DATE.—Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.

SEC. 212. REPORT AND OVERSIGHT REQUIREMENTS.

Section 301 of CERCLA is amended by adding at the end thereof the following new subsection:

"(h) REPORT AND OVERSIGHT REQUIREMENTS.—

"(1) ANNUAL REPORT BY EPA.—On January 1 of each year the Administrator of the Environmental Protection Agency shall submit an annual report to Congress of such Agency on the progress achieved in implementing this Act during the preceding fiscal year. In addition such report shall specifically include each of the following:

"(A) A detailed description of each feasibility study carried out at a facility under title I of this Act.

"(B) The status and estimated date of completion of each such study.

"(C) Notice of each such study which will not meet a previously published schedule for completion and the new estimated date for completion.

"(D) An evaluation of newly developed feasible and achievable permanent treatment technologies.

"(E) Progress made in reducing the number of facilities subject to review under section 121(c).

"(F) A report on the status of all remedial and enforcement actions undertaken during the prior fiscal year, including a comparison to remedial and enforcement actions undertaken in prior fiscal years.

"(G) An estimate of the amount of resources, including the number of work years or personnel, which would be necessary for each department, agency, or instrumentality which is carrying out any activities of this Act to complete the implementation of all duties vested in the department, agency, or instrumentality under this Act.

"(2) REVIEW BY INSPECTOR GENERAL.—Consistent with the authorities of the Inspector General Act of 1978 the Inspector General of the Environmental Protection Agency shall review any report submitted under paragraph (1) related to EPA's activities for reasonableness and accuracy and submit to Congress, as a part of such report a report on the results of such review.

"(3) CONGRESSIONAL OVERSIGHT.—After receiving the reports under paragraphs (1) and (2) of this subsection in any calendar year, the appropriate authorizing committees of Congress shall conduct oversight hearings to ensure that this Act is being implemented according to the purposes of this Act and congressional intent in enacting this Act.".

SEC. 213. LOVE CANAL PROPERTY ACQUISITION.

(a) CONGRESSIONAL FINDINGS.—

(1) The area known as Love Canal located in the city of Niagara Falls and the town of Wheatfield, New York, was the first toxic waste site to receive national attention. As a result of that attention Congress investigated the problems associated with toxic waste sites and enacted CERCLA to deal with these problems.

(2) Because Love Canal came to the Nation's attention prior to the passage of CERCLA and because the fund under CERCLA was not available to compensate for all of the hardships endured by the citizens in the area, Congress has determined that special provisions are required. These provisions do not affect the lawfulness, implementation, or selection of any other response actions at Love Canal or at any other facilities.

(b) Amendment of Superfund.—Title III of CERCLA is amended by adding the following new section at the end thereof:

"SEC. 312. LOVE CANAL PROPERTY ACQUISITION.

"(a) Acquisition of Property in Emergency Declaration Area.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') may make grants not to exceed $2,500,000 to the State of New York (or to any duly constituted public agency or authority thereof) for purposes of acquisition of private property in the Love Canal Emergency Declaration Area. Such acquisition shall include (but shall not be limited to) all private property within the Emergency Declaration Area, including non-owner occupied residential properties, commercial, industrial, public, religious, non-profit, and vacant properties.

"(b) Procedures for Acquisition.—No property shall be acquired pursuant to this section unless the property owner voluntarily agrees to such acquisition. Compensation for any property acquired pursuant to this section shall be based upon the fair market value of the property as it existed prior to the emergency declaration. Valuation procedures for property acquired with funds provided under this section shall be in accordance with those set forth in the agreement entered into between the New York State Disaster Preparedness Commission and the Love Canal Revitalization Agency on October 9, 1980.

"(c) State Ownership.—The Administrator shall not provide any funds under this section for the acquisition of any properties pursuant to this section unless a public agency or authority of the State of New York first enters into a cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State or an agency created under the laws of the State shall take title to the properties to be so acquired.

"(d) Maintenance of Property.—The Administrator shall enter into a cooperative agreement with an appropriate public agency or authority of the State of New York under which the Administrator shall maintain or arrange for the maintenance of all properties within the Emergency Declaration Area that have been acquired by any public agency or authority of the State. Ninety (90) percent of the costs of such maintenance shall be paid by the Administrator. The remaining portion of such costs shall be paid by the State (unless a credit is available under section 104(c)). The Administrator is authorized, in his discretion, to provide technical assistance to

any public agency or authority of the State of New York in order to implement the recommendations of the habitability and land-use study in order to put the land within the Emergency Declaration Area to its best use.

"(e) HABITABILITY AND LAND USE STUDY.—The Administrator shall conduct or cause to be conducted a habitability and land-use study. The study shall—

"(1) assess the risks associated with inhabiting of the Love Canal Emergency Declaration Area;

"(2) compare the level of hazardous waste contamination in that Area to that present in other comparable communities; and

"(3) assess the potential uses of the land within the Emergency Declaration Area, including but not limited to residential, industrial, commercial and recreational, and the risks associated with such potential uses.

The Administrator shall publish the findings of such study and shall work with the State of New York to develop recommendations based upon the results of such study.

"(f) FUNDING.—For purposes of section 111 ***[and 221(c) of this Act]****, the expenditures authorized by this section shall be treated as a cost specified in section 111(c).*

"(g) RESPONSE.—The provisions of this section shall not affect the implementation of other response actions within the Emergency Declaration Area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

"(h) DEFINITIONS.—For purposes of this section:

"(1) EMERGENCY DECLARATION AREA.—The terms 'Emergency Declaration Area' and 'Love Canal Emergency Declaration Area' mean the Emergency Declaration Area as defined in section 950, paragraph (2) of the General Municipal Law of the State of New York, Chapter 259, Laws of 1980, as in effect on the date of the enactment of this section.

"(2) PRIVATE PROPERTY.—As used in subsection (a), the term 'private property' means all property which is not owned by a department, agency, or instrumentality of—

"(A) the United States, or

"(B) the State of New York (or any public agency or authority thereof).".

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SEC. 300. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Emergency Planning and Community Right-To-Know Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents of this title is as follows:

Sec. 300. Short title; table of contents.

Subtitle A—Emergency Planning and Notification

Sec. 301. Establishment of State commissions, planning districts, and local committees.
Sec. 302. Substances and facilities covered and notification.
Sec. 303. Comprehensive emergency response plans.

Sec. 304. Emergency notification.
Sec. 305. Emergency training and review of emergency systems.

Subtitle B—Reporting Requirements

Sec. 311. Material safety data sheets.
Sec. 312. Emergency and hazardous chemical inventory forms.
Sec. 313. Toxic chemical release forms.

Subtitle C—General Provisions

Sec. 321. Relationship to other law.
Sec. 322. Trade secrets.
Sec. 323. Provision of information to health professionals, doctors, and nurses.
Sec. 324. Public availability of plans, data sheets, forms, and followup notices.
Sec. 325. Enforcement.
Sec. 326. Civil Actions.
Sec. 327. Exemption.
Sec. 328. Regulations.
Sec. 329. Definitions.
Sec. 330. Authorization of appropriations.

Subtitle A—Emergency Planning and Notification

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.—Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) ESTABLISHMENT OF EMERGENCY PLANNING DISTRICTS.—Not later than nine months after the date of the enactment of this title, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subtitle are within such emergency planning district.

(c) Establishment of Local Emergency Planning Committees.—Not later than 30 days after designation of emergency planning districts or 10 months after the date of the enactment of this title, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 324, including tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions.—A State emergency response commission may revise its designations and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

SEC. 302. SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION.

(a) Substances Covered.—

(1) In general.—A substance is subject to the requirements of this subtitle if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances.—Within 30 days after the date of the enactment of this title, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds.—(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a sub-

stance within 30 days after the date of the enactment of this title, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) REVISIONS.—The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) FACILITIES COVERED.—(1) Except as provided in section 304, a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subtitle, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) EMERGENCY PLANNING NOTIFICATION.—Not later than seven months after the date of the enactment of this title, the owner or operator of each facility subject to the requirements of this subtitle by reason of subsection (b)(1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subtitle. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subtitle.

(d) NOTIFICATION OF ADMINISTRATOR.—The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subtitle by notifying the Administrator of—

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2).

SEC. 303. COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) PLAN REQUIRED.—Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year, or

more frequently as changed circumstances in the community or at any facility may require.

(b) Resources.—Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan Provisions.—Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of Information.—For each facility subject to the requirements of this subtitle:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after the date of the enactment of this title, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) REVIEW BY THE STATE EMERGENCY RESPONSE COMMISSION.—After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) GUIDANCE DOCUMENTS.—The national response team, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after the date of the enactment of this title.

(g) REVIEW OF PLANS BY REGIONAL RESPONSE TEAMS.—The regional response teams, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

SEC. 304. EMERGENCY NOTIFICATION.

(a) TYPES OF RELEASES.—

(1) 302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) OTHER 302(a) SUBSTANCE.—If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA,

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA.

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) NON-302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE.—If a release of a substance which is not on the list referred to in section 302(a) occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA, the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA, the owner or operator shall provide notice as described in subsection (b).

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERLCA—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA.

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) EXEMPTED RELEASES.—This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) NOTIFICATION.—

(1) RECIPIENTS OF NOTICE.—Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 301(c), for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) CONTENTS.—Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 302(a).

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) FOLLOWUP EMERGENCY NOTICE.—As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) TRANSPORTATION EXEMPTION NOT APPLICABLE.—The exemption provided in section 327 (relating to transportation) does not apply to this section.

SEC. 305. EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS.

(a) EMERGENCY TRAINING.—

(1) PROGRAMS.—Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) STATE AND LOCAL PROGRAM SUPPORT.—There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The re-

maining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs.—Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of Emergency Systems.—

(1) Review.—The Administrator shall initiate, not later than 30 days after the date of the enactment of this title, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 302(a) for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 18 months after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report.—The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations.—The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

Subtitle B—Reporting Requirements

SEC. 311. MATERIAL SAFETY DATA SHEETS.

(a) BASIC REQUIREMENT.—

(1) SUBMISSION OF MSDS OR LIST.—The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (15 U.S.C. 651 et seq.) shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) CONTENTS OF LIST.—(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) TREATMENT OF MIXTURES.—An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities

may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on Request.—

(1) To local emergency planning committee.—If an owner or operator of a facility submits a list of chemicals under subsection (a)(1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public.—A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 324. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 324.

(d) Initial Submission and Updating.—(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after the date of the enactment of this title, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) Hazardous Chemical Defined.—For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

SEC. 312. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS.

(a) Basic Requirement.—(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemi-

cal inventory form (hereafter in this title referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1)) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2)) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) THRESHOLDS.—The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) HAZARDOUS CHEMICALS COVERED.—A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311.

(d) CONTENTS OF FORM.—

(1) TIER I INFORMATION.—

(A) AGGREGATE INFORMATION BY CATEGORY.—An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(B) REQUIRED INFORMATION.—The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) MODIFICATIONS.—For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) TIER II INFORMATION.—An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

(e) AVAILABILITY OF TIER II INFORMATION.—

(1) AVAILABILITY TO STATE COMMISSIONS, LOCAL COMMITTEES, AND FIRE DEPARTMENTS.—Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) AVAILABILITY TO OTHER STATE AND LOCAL OFFICIALS.—A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) AVAILABILITY TO PUBLIC.—

(A) IN GENERAL.—Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) AUTOMATIC PROVISION OF INFORMATION TO PUBLIC.—Any tier II information which a State emergency response commission or local emergency planning committee has in

its possession shall be made available to a person making a request under this paragraph in accordance with section 324. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 to the person making the request.

(C) DISCRETIONARY PROVISION OF INFORMATION TO PUBLIC.—In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 to the person.

(D) RESPONSE IN 45 DAYS.—A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) FIRE DEPARTMENT ACCESS.—Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) FORMAT OF FORMS.—The Administrator shall publish a uniform format for inventory forms within three months after the date of the enactment of this title. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

SEC. 313. TOXIC CHEMICAL RELEASE FORMS.

(a) BASIC REQUIREMENT.—The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, proc-

essed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) COVERED OWNERS AND OPERATORS OF FACILITIES.—

(1) IN GENERAL.—(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemcial, or

(II) as part of an article containing the toxic chemical.

(2) DISCRETIONARY APPLICATION TO ADDITIONAL FACILITIES.—The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) TOXIC CHEMICALS COVERED.—The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (including any revised version of the list as may be made pursuant to subsection (d) or (e)).

(d) REVISIONS BY ADMINISTRATOR.—

(1) In general.—The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) Additions.—A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions.—A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date.—Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calender year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions.—

(1) In general.—Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3).

(B) Publish an explanation of why the petition is denied.

(2) Governor petitions.—A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) for adding a chemical to the list.

(f) Threshold for Reporting.—

(1) Toxic chemical threshold amount.—The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions.—The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form.—

(1) Information required.—Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the

person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) USE OF AVAILABLE DATA.—In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) USE OF RELEASE FORM.—The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 324(a), to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) MODIFICATIONS IN REPORTING FREQUENCY.—

(1) IN GENERAL.—The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) REQUIREMENTS.—A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United States Code.

(3) DETERMINATIONS.—The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-YEAR REVIEW.—Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) NOTIFICATION TO CONGRESS.—The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) JUDICIAL REVIEW.—In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) APPLICABILITY.—A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) EFFECTIVE DATE.—Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA MANAGEMENT OF DATA.—The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report.—Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) Mass Balance Study.—

(1) In general.—The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after the date of the enactment of this title.

(2) Purposes.—The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this title.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection.—(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after the date of enactment of this title initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a

particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) MASS BALANCE DEFINITION.—For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

Subtitle C—General Provisions

SEC. 321. RELATIONSHIP TO OTHER LAW.

(a) IN GENERAL.—Nothing in this title shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) EFFECT ON MSDS REQUIREMENTS.—Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

SEC. 322. TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.—

(1) GENERAL AUTHORITY.—(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 303(d)(2), 303(d)(3), 311, 312, or 313 to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) REQUIREMENTS.—(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b),

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) LIMITATION.—The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) TRADE SECRET FACTORS.—No person required to provide information under this title may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) TRADE SECRET REGULATIONS.—As soon as practicable after the date of enactment of this title, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of

such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL–CIO–CLC v. Thorne G. Auchter.

(d) PETITION FOR REVIEW.—

(1) IN GENERAL.—Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) INITIAL REVIEW.—Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) FINDING OF SUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint may seek judicial review of the determination.

(4) FINDING OF INSUFFICIENT ASSERTIONS.—

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good

cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS.—Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 323.

(f) PROVIDING INFORMATION TO THE ADMINISTRATOR; AVAILABILITY TO PUBLIC.—Any information submitted to the Administrator under subsection (a)(2) or subsection (d)(3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

(g) INFORMATION PROVIDED TO STATE.—Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) and subsection (d)(3).

(h) INFORMATION ON ADVERSE EFFECTS.—(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 313(j) and is provided to any person requesting information about such toxic chemical.

(i) INFORMATION PROVIDED TO CONGRESS.—Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

SEC. 323. PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) MEDICAL EMERGENCY.—An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTIVE MEASURES BY LOCAL HEALTH PROFESSIONALS.—

(1) PROVISION OF INFORMATION.—An owner or operator of a facility subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) WRITTEN STATEMENT OF NEED.—The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) CONFIDENTIALITY AGREEMENT.—Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) REGULATIONS.—As soon as practicable after the date of the enactment of this title, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) and the confidentiality agreement under subsection (d).

SEC. 324. PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS, AND FOLLOWUP NOTICES.

(a) AVAILABILITY TO PUBLIC.—Each emergency response plan, material safety data sheet, list described in section 311(a)(2), inventory form, toxic chemical release form, and followup emergency notice

shall be made available to the general public, consistent with section 322, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312(d)(2) to be contained in an inventory form as tier II information.

(b) NOTICE OF PUBLIC AVAILABILITY.—Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a).

SEC. 325. ENFORCEMENT.

(a) CIVIL PENALTIES FOR EMERGENCY PLANNING.—The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302(b)(2)) to comply with section 302(c) and section 303(d). The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES FOR EMERGENCY NOTIFICATION.—

(1) CLASS I ADMINISTRATIVE PENALTY.—(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) CLASS II ADMINISTRATIVE PENALTY.—A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and

collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) JUDICIAL ASSESSMENT.—The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) CRIMINAL PENALTIES.—Any person who knowingly and willfully fails to provide notice in accordance with section 304 shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) CIVIL AND ADMINISTRATIVE PENALTIES FOR REPORTING REQUIREMENTS.—(1) Any person (other than a governmental entity) who violates any requirement of section 312 or 313 shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 311 or 323(b), and any person who fails to furnish to the Administrator information required under section 322(a)(2) shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES WITH RESPECT TO TRADE SECRETS.—

(1) CIVIL AND ADMINISTRATIVE PENALTY FOR FRIVOLOUS CLAIMS.—If the Administrator determines—

(A)(i) under section 322(d)(4) that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 322(d)(3)(A), that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information.—Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 322 shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) Special Enforcement Provisions for Section 323.—Whenever any facility owner or operator required to provide information under section 323 to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 323.

(f) Procedures for Administrative Penalties.—

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 326. CIVIL ACTIONS.

(a) Authority To Bring Civil Actions.—

(1) Citizen suits.—Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 304(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1) unless such requirement does not apply by reason of the second sentence of section 312(a)(2).

(iv) Complete and submit a toxic chemical release form under section 313(a).

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g).

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313(g).

(iv) Establish a computer database in accordance with section 313(j).

(v) Promulgate trade secret regulations under section 322(c).

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

(2) STATE OR LOCAL SUITS.—

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c).

(ii) Submit a material safety data sheet or a list under section 311(a).

(iii) Make available information requested under section 311(c).

(iv) Complete and submit an inventory form under section 312(a) containing tier I information unless such requirement does not apply by reason of the second sentence of section 312(a)(2).

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or for failure to submit tier II information under section 312(e)(1).

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

(b) VENUE.—

(1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) RELIEF.—The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) NOTICE.—

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) LIMITATION.—No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) OTHER RIGHTS.—Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) INTERVENTION.—

(1) BY THE UNITED STATES.—In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons.—In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

SEC. 327. EXEMPTION.

Except as provided in section 304, this title does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas.

SEC. 328. REGULATIONS.

The Administrator may prescribe such regulations as may be necessary to carry out this title.

SEC. 329. DEFINITIONS.

For purposes of this title—

(1) Administrator.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment.—The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance.—The term "extremely hazardous substance" means a substance on the list described in section 302(a)(2).

(4) Facility.—The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 304, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical.—The term "hazardous chemical" has the meaning given such term by section 311(e).

(6) Material safety data sheet.—The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person.—The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release.—The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto

Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical.—The term "toxic chemical" means a substance on the list described in section 313(c).

SEC. 330. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this title.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

SEC. 401. SHORT TITLE.

This title may be cited as the "Radon Gas and Indoor Air Quality Research Act of 1986".

SEC. 402. FINDINGS.

The Congress finds that:

(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

(a) Design of Program.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

(b) Program Requirements.—The research program required under this section shall include—

(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

(A) the measurement of various pollutant concentrations and their strengths and sources,

(B) high-risk building types, and

(C) instruments for indoor air quality data collection;

(2) research relating to the effects of indoor air pollution and radon on human health;

(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

(B) design measures to avoid indoor air pollution; and

(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act, the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

(e) REPORT.—Not later than 2 years after the enactment of this Act, the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

SEC. 404. CONSTRUCTION OF TITLE.

Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

SEC. 405. AUTHORIZATIONS.

There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).

TITLE V—AMENDMENTS OF THE INTERNAL REVENUE CODE OF 1986

SEC. 501. SHORT TITLE.

This title may be cited as the "Superfund Revenue Act of 1986".

PART I—SUPERFUND AND ITS REVENUE SOURCES

SEC. 511. EXTENSION OF ENVIRONMENTAL TAXES.

(a) IN GENERAL.—Subsection (d) of section 4611 of the Internal Revenue Code of 1986 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the taxes imposed by this section shall apply after December 31, 1986, and before January 1, 1992.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND EXCEEDS $3,500,000,000.—IF ON DECEMBER 31, 1989, OR DECEMBER 31, 1990—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,500,000,000, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that the unobligated balance in the Hazardous Substance Superfund will exceed $3,500,000,000 on December 31 of 1990 or 1991, respectively, if no tax is imposed under section 59A, this section, and sections 4661 and 4671,

then no tax shall be imposed under this section during 1990 or 1991, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $6,650,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of the amount of taxes which will be collected under section 59A, this section, and sections 4661 and 4671 and credited to the Hazardous Substance Superfund during the period beginning January 1, 1987, and ending December 31, 1991.

"(B) TERMINATION IF $6,650,000,000 CREDITED BEFORE JANUARY 1, 1992.—If the Secretary estimates under subparagraph (A) that more than $6,650,000,000 will be credited to the Fund before January 1, 1992, no tax shall be imposed under this section after the date on which (as estimated by the Secretary) $6,650,000,000 will be so credited to the Fund."

(b) TECHNICAL AMENDMENT.—Section 303 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 512. INCREASE IN TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1986 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the rate of the taxes imposed by this section is 8.2 cents a barrel.

"(2) IMPORTED PETROLEUM PRODUCTS.—The rate of the tax imposed by subsection (a)(2) shall be 11.7 cents a barrel."

(c) ALLOWANCE OF CREDIT FOR CRUDE OIL RETURNED TO PIPELINE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT WHERE CRUDE OIL RETURNED TO PIPELINE.—Under regulations prescribed by the Secretary, if an operator of a United States refinery—

"(1) removes crude oil from a pipeline, and

"(2) returns a portion of such crude oil into a stream of other crude oil in the same pipeline,

there shall be allowed as a credit against the tax imposed by section 4611 to such operator an amount equal to the product of the rate of tax imposed by section 4611 on the crude oil so removed by such operator and the number of barrels of crude oil returned by such operator to such pipeline. Any crude oil so returned shall be treated for purposes of this subchapter as crude oil on which no tax has been imposed by section 4611."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 513. CHANGES RELATING TO TAX ON CERTAIN CHEMICALS.

(a) INCREASE IN RATE OF TAX ON XYLENE.—The table contained in subsection (b) of section 4661 of the Internal Revenue Code of 1986 (relating to tax on certain chemicals) is amended by adding at the end thereof the following new sentence:

"For periods before 1992, the item relating to xylene in the preceding table shall be applied by substituting '10.13' for '4.87'."

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 of such Code (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) Proof of export required.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) Credit or refund where tax paid.—

"(A) In general.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii)(I) such chemical was exported by any person, or

"(II) such chemical was used as a material in the manufacture or production of a substance which was exported by any person and which, at the time of export, was a taxable substance (as defined in section 4672(a)),

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) Condition to allowance.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(2) Paragraph (1) of section 4662(d) of such Code (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section" and inserting in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(c) Special Rule for Xylene.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) Special rule for xylene.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(d) Exemption for Certain Recycled Chemicals.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) Recycled chromium, cobalt, and nickel.—

"(A) In general.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, or nickel which is diverted or recovered in the United States from any solid waste

as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer at the unit at which the recycling occurs is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SPECIAL RULE FOR GROUNDWATER TREATMENT.—In the case of corrective action requiring groundwater treatment, such action shall be treated as completed as of the close of the 10-year period beginning on the date such action is required if such treatment complies with the permit or order applicable under subparagraph (C)(i) throughout such period. The preceding sentence shall cease to apply beginning on the date such treatment ceases to comply with such permit or order.

"(E) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(e) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is a qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the 1st person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 of such Code (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(f) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 of such Code (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufactures, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(g) SPECIAL RULES RELATING TO HYDROCARBON STREAMS CONTAINING ORGANIC TAXABLE CHEMICALS.—Subsection (b) of section 4662 of such Code (relating to exceptions; other special rules) is amended by adding after paragraph (9) the following new paragraph:

"(10) HYDROCARBON STREAMS CONTAINING MIXTURES OF ORGANIC TAXABLE CHEMICALS.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any organic taxable chemical while such chemical is part of an intermediate hydrocarbon stream containing a mixture of organic taxable chemicals.

"(B) REMOVAL, ETC., TREATED AS USE.—For purposes of this part, if any organic taxable chemical on which no tax was imposed by reason of subparagraph (A) is isolated, extracted, or otherwise removed from, or ceases to be part of, an intermediate hydrocarbon stream—

"(i) such isolation, extraction, removal, or cessation shall be treated as use by the person causing such event, and

"(ii) such person shall be treated as the manufacturer of such chemical.

"(C) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any sale of any intermediate hydrocarbon stream unless the registration requirements of clauses (i) and (ii) of subsection (c)(2)(B) are satisfied.

"(D) ORGANIC TAXABLE CHEMICAL.—For purposes of this paragraph, the term 'organic taxable chemical' means any taxable chemical which is an organic substance."

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1987.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE OCTOBER 1, 1985.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—

(i) IN GENERAL.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before October 1, 1985, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(ii) Condition to allowance.—Clause (i) shall not apply to a sale of xylene unless the person who (but for clause (i)) would be liable for the tax imposed by section 4661 on such sale meets requirements similar to the requirements of paragraph (1) of section 6416(a) of such Code. For purposes of the preceding sentence, subparagraph (A) of section 6416(a)(1) of such Code shall be applied without regard to the material preceding "has not collected".

(B) Waiver of statute of limitations.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) Xylene to include isomers.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) Inventory exchanges.—

(A) In general.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) Recipient must agree to treatment as manufacturer.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) Exception where manufacturer paid tax.—In the case of any inventory exchange before January 1, 1987, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) Registration requirements.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1986.

(4) Exports of taxable substances.—Subclause (II) of section 4662(e)(2)(A)(ii) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1989.

(5) Sales of intermediate hydrocarbon streams.—

(A) In general.—Except as otherwise provided in this paragraph, the amendment made by subsection (g) shall apply as if included in the amendments made by section 211 of the Hazardous Substances Response Revenue Act of 1980.

(B) Purchaser must agree to treatment as manufacturer.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall apply only if the purchaser agrees to be treated as the manufacturer, producer, or importer for purposes of subchapter B of chapter 38 of such Code.

(C) Exception where manufacturer paid tax.—In the case of any sale before January 1, 1987, of any intermediate hydrocarbon stream, the amendment made by subsection (g) shall not apply if the manufacturer, producer, or importer of such stream paid the tax imposed by section 4661 with respect to such sale on all taxable chemicals contained in such stream.

(D) Registration requirements.—Section 4662(b)(10)(C) of such Code (as added by subsection (g)) shall apply to exchanges made after December 31, 1986.

SEC. 514. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) Repeal of Tax.—

(1) Subchapter C of chapter 38 of the Internal Revenue Code of 1986 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) Repeal of Trust Fund.—Section 232 of the Hazardous Substance Response Revenue Act of 1980 is hereby repealed.

(c) Effective Date.—

(1) In general.—The amendments made by this section shall take effect on October 1, 1983.

(2) Waiver of statute of limitations.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of this section is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

SEC. 515. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) General Rule.—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding after subchapter B the following new subchapter:

"Subchapter C—Tax on Certain Imported Substances

"Sec. 4671. Imposition of tax.
"Sec. 4672. Definitions and special rules.

"SEC. 4671. IMPOSITION OF TAX.

"(a) General Rule.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) Amount of Tax.—

"(1) In general.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals

used as materials in the manufacture or production of such substance if such taxable chemicals had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(3) AUTHORITY TO PRECRIBE RATE IN LIEU OF PARAGRAPH (2) RATE.—The Secretary may prescribe for each taxable substance a tax which, if prescribed, shall apply in lieu of the tax specified in paragraph (2) with respect to such substance. The tax prescribed by the Secretary shall be equal to the amount of tax which would be imposed by subsection (a) with respect to the taxable substance if such substance were produced using the predominant method of production of such substance.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TAX-FREE SALES, ETC. FOR SUBSTANCES USED AS CERTAIN FUELS OR IN THE PRODUCTION OF FERTILIZER OR ANIMAL FEED.—Rules similar to the following rules shall apply for purposes of applying this section with respect to taxable substances used or sold for use as described in such rules:

"(1) Paragraphs (2), (5), and (9) of section 4662(b) (relating to tax-free sales of chemicals used as fuel or in the production of fertilizer or animal feed).

"(2) Paragraphs (2), (3), and (4) of section 4662(d) (relating to refund or credit of tax on certain chemicals used as fuel or in the production of fertilizer or animal feed).

"(e) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a).

"SEC. 4672. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that taxable chemicals constitute more than 50 percent of the weight of the materials

used to produce such substance (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—

Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers
Urea
Ferronickel
Ferrochromium nov 3 pct
Ferrochrome ov 3 pct. carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Ethylbenzene
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Acrylonitrile
Methanol
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophthalic acid
Maleic anhydride
Phthalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins
Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—

"(A) IN GENERAL.—The Secretary may add substances to or remove substances from the list under paragraph (3) (including items listed by reason of paragraph (2)) as necessary to carry out the purposes of this subchapter.

"(B) AUTHORITY TO ADD SUBSTANCES TO LIST BASED ON VALUE.—The Secretary may, to the extent necessary to carry out the purposes of this subchapter, add any substance to the list under paragraph (3) if such substance would be described in paragraph (2)(B) if 'value' were substituted for 'weight' therein.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of such Code is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989.

(d) STUDY.—

(1) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of issues relating to the implementation of—

(A) the tax imposed by the section 4671 of the Internal Revenue Code of 1986 (as added by this section), and

(B) the credit for exports of taxable substances under section 4661(e)(2)(A)(ii)(II) of such Code.

In conducting such study, the Secretary of the Treasury or his delegate shall consult with the Environmental Protection Agency and the International Trade Commission.

(2) REPORT.—The report of the study under paragraph (1) shall be submitted not later than January 1, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 516. ENVIRONMENTAL TAX.

(a) IN GENERAL.—Subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to income taxes) is amended by adding at the end thereof the following new part:

"PART VII—ENVIRONMENTAL TAX

"Sec. 59A. Environmental tax.

"SEC. 59A. ENVIRONMENTAL TAX.

"(a) IMPOSITION OF TAX.—In the case of a corporation, there is hereby imposed (in addition to any other tax imposed by this subtitle) a tax equal to 0.12 percent of the excess of—

"(1) the modified alternative minimum taxable income of such corporation for the taxable year, over

"(2) $2,000,000.

"(b) MODIFIED ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of this section, the term 'modified alternative minimum taxable income' means alternative minimum taxable income (as defined in section 55(b)(2)) but determined without regard to—

"(1) the alternative tax net operating loss deduction (as defined in section 56(d)), and

"(2) the deduction allowed under section 164(a)(5).

"(c) SPECIAL RULES.—

"(1) SHORT TAXABLE YEARS.—The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary.

"(2) SECTION 15 NOT TO APPLY.—Section 15 shall not apply to the tax imposed by this section.

"(d) APPLICATION OF TAX.—

"(1) IN GENERAL.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

"(2) EARLIER TERMINATION.—The tax imposed by this section shall not apply to taxable years—

"(A) beginning during a calendar year during which no tax is imposed under section 4611(a) by reason of paragraph (2) of section 4611(e), and

"(B) beginning after the calendar year which includes the termination date under paragraph (3) of section 4611(e)."

(b) TECHNICAL AMENDMENTS.—

(1) NO CREDITS ALLOWED AGAINST TAX.—

(A) Paragraph (2) of section 26(b) of such Code, as amended by the Tax Reform Act of 1986, is amended by redesignating subparagraphs (B) through (J) as subparagraphs (C) through (K), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) section 59A (relating to environmental tax),".

(B) Paragraph (3) of section 936(a) of such Code, as so amended, is amended by redesignating subparagraphs (A), (B), and (C) as subparagraphs (B), (C), and (D), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 59A (relating to environmental tax),".

(2) TAX TO BE DEDUCTIBLE FOR INCOME TAX PURPOSES.—

(A) Subsection (a) of section 164 of such Code (relating to deduction for taxes), as so amended, is amended by inserting after paragraph (4) the following new paragraph:

"(5) The environmental tax imposed by section 59A."

(B) Subsection (a) of section 275 of such Code is amended by adding at the end thereof the following new sentence: "Paragraph (1) shall not apply to the tax imposed by section 59A."

(3) LIMITATION IN CASE OF CONTROLLED CORPORATIONS.—Subsection (a) of section 1561 of such Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations), as amended by the Tax Reform Act of 1986, is amended—

(A) by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and by inserting after paragraph (3) the following new paragraph:

"(4) one $2,000,000 amount for purposes of computing the tax imposed by section 59A.", and

(B) by striking out "(and the amount specified in paragraph (3))" and inserting in lieu thereof ", the amount specified in paragraph (3), and the amount specified in paragraph (4)".

(4) Amendments to estimated tax provisions.—

(A) Tax liability must be estimated.—

(i) Paragraph (1) of section 6154(c) of such Code, as so amended, is amended by striking out "and" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "and", and by adding at the end thereof the following new subparagraph:

"(C) the environmental tax imposed by section 59A, over".

(ii) Subsection (a) of section 6154 of such Code is amended by striking out "section 11" and inserting "section 11, 59A,".

(C) Conforming amendment to overpayment of estimated tax.—Subparagraph (A) of section 6425(c)(1) of such Code, as amended by the Tax Reform Act of 1986, is amended by striking cut "plus" at the end of clause (i), by striking out "over" at the end of clause (ii) and inserting in lieu thereof "plus", and by adding at the end thereof the following new clause:

"(iii) the tax imposed by section 59A, over".

(D) Conforming amendment to penalty for failure to pay estimated tax.—Paragraph (1) of section 6655(f) of such Code (defining tax), as so amended, is amended by striking out "plus" at the end of subparagraph (A), by striking out "over" at the end of subparagraph (B) and inserting in lieu thereof "plus", and by adding at the end thereof the following new subparagraph:

"(C) the tax imposed by section 59A, over".

(5) Clerical amendment.—The table of parts for subchapter A of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Part VII. Environmental tax."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 517. HAZARDOUS SUBSTANCE SUPERFUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section,

"(2) appropriated to the Superfund pursuant to section 517(b) of the Superfund Revenue Act of 1986, or

"(3) credited to the Superfund as provided in section 9602(b).

"(b) Transfers to Superfund.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 59A, 4611, 4661, or 4671 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) EXPENDITURES FROM SUPERFUND.—

"(1) IN GENERAL.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of—

"(i) paragraphs (1), (2), (5), and (6) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986,

"(ii) section 111(c) of CERCLA (as so in effect), other than paragraphs (1) and (2) thereof, and

"(iii) section 111(m) of CERCLA (as so in effect), or

"(B) hereafter authorized by a law which does not authorize the expenditure out of the Superfund for a general purpose not covered by subparagraph (A) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator of the Environmental Protection Agency and a State if the following conditions apply—

"(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement,

"(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984, and

"(C) the transfer is from a facility identified as the McColl Site in Fullerton, California.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) LIMITATION ON AGGREGATE ADVANCES.—The maximum aggregate amount of repayable advances to the Superfund which is outstanding at any one time shall not exceed an amount equal to the amount which the Secretary estimates will be equal to the sum of the amounts appropriated to the Superfund under subsection (b)(1) during the following 24 months.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Superfund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) Final repayment.—No advance shall be made to the Superfund after December 31, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) Rate of interest.—Interest on advances made to the Superfund shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) Liability of United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) Coordination with other provisions.—Nothing in CERCLA or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) Order in which unpaid claims are to be paid.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) Authorization of Appropriations.—There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund for fiscal year—

(1) 1987, $250,000,000,
(2) 1988, $250,000,000,
(3) 1989, $250,000,000,
(4) 1990, $250,000,000, and
(5) 1991, $250,000,000,

plus for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated under this subsection (and paragraph (2) of section 221(b) of the Hazardous Substance Response Act of 1980, as in effect before its repeal) as has not been appropriated before the beginning of the fiscal year involved.

(c) Conforming Amendments.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund), as amended by section 204 of this Act, is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) The term 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986."

(d) Clerical Amendment.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Hazardous Substance Superfund."

(e) Effective Date.—

(1) In general.—The amendments made by this section shall take effect on January 1, 1987.

(2) Superfund treated as continuation of old trust fund.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

PART II—LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND ITS REVENUE SOURCES

SEC. 521. ADDITIONAL TAXES ON GASOLINE, DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) General Rule.—

(1) Gasoline.—

(A) Gasoline tax before amendment by Tax Reform Act of 1986.—

(i) In general.—Section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) In General.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax at the rate specified in subsection (b).

"(b) Rate of Tax.—

"(1) In general.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) Rates.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon."

(ii) Termination.—Section 4081 of such Code, as so in effect, is amended by adding at the end thereof the following new subsection:

"(d) Termination.—

"(1) Highway trust fund financing rate.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (b)(2)(A) shall not apply.

"(2) Leaking underground storage tank trust fund financing rate.—

"(A) In general.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) Termination month.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (b)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) Net revenues.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) Technical amendments.—Subsection (c) of section 4081 of such Code, as so in effect, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (b)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(B) Gasoline tax as amended by tax reform act of 1986.—

(i) In general.—Subsections (a) and (b) of section 4081 of the Internal Revenue Code of 1986 (relating to imposition of tax on gasoline), as amended by the Tax Reform Act of 1986, are each amended by striking out "of 9 cents a gallon" and inserting in lieu thereof "at the rate specified in subsection (d)".

(ii) Increase in tax.—Section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended by striking out subsection (d) and inserting in lieu thereof the the following new subsections:

"(d) Rate of Tax.—

"(1) In general.—The rate of the tax imposed by this section is the sum of—

"(A) the Highway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) Rates.—For purposes of paragraph (1)—

"(A) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(e) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1988, the Highway Trust Fund financing rate under subsection (d)(2)(A) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—

"(A) IN GENERAL.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B) shall not apply after the earlier of—

"(i) December 31, 1991, or

"(ii) the last day of the termination month.

"(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by this section (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under subsection (d)(2)(B)), section 4041(d), and section 4042 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b)) are at least $500,000,000.

"(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 9508(c)(2) (relating to transfer from Leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(iii) TECHNICAL AMENDMENTS.—Subsection (c) of section 4081 of such Code, as amended by the Tax Reform Act of 1986, is amended—

(I) by striking out "subsection (a)" in paragraph (1) and inserting in lieu thereof "subsection (d)", and

(II) by striking out "a rate" in paragraph (2) and inserting in lieu thereof "a Highway Trust Fund financing rate".

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 of such Code (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE, ETC., USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cents a gallon on benzol, benzene, naphtha, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, liquefied petroleum gas, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.1 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 of such Code (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 of such Code (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), there shall not be taken into account the taxes imposed by section 4041(d) and so much of the taxes imposed by section 4081 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) of such Code (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 of such Code (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081 (to the extent attributable to the Highway Trust Fund financing rate)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 9506(b) of such Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 of such Code (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.1 CENT TAX.—Subsection (h) of section 6421 of such Code (relating to effective date), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, this section".

(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 of such Code, as so in effect, is amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081 AT THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used in any

off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 of such Code (relating to termination), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by section 4041(d) and section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections".

(B)(i) Section 6427 of such Code, as so in effect, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(ii) Subparagraph (A) of section 1703(e)(1) of the Tax Reform Act of 1986 is amended—

(I) by striking out "and (o)" and inserting in lieu thereof "(o), and (p)", and

(II) by striking out "and (n)" and inserting in lieu thereof "(n), and (o)".

(C) Paragraph (1) of section 6427(f) of such Code (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "at the rate" and inserting in lieu thereof "at the Highway Trust Fund financing rate".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

(1) Subsection (b) of section 4041 of such Code (relating to exemption for off-highway business use; reduction in tax for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) OFF-HIGHWAY BUSINESS USE.—

"(i) IN GENERAL.—Except as provided in clause (ii), rules similar to the rules of paragraph (1) shall apply with respect to the taxes imposed by subsection (d).

"(ii) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(B) QUALIFIED METHANOL AND ETHANOL FUEL.—In the case of qualified methanol or ethanol fuel, subsection (d) shall be applied by substituting '0.05 cents' for '0.1 cents' in paragraph (1) thereof."

(2) Paragraph (3) of section 4041(f) of such Code (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) of such Code (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4)(A) The last sentence of section 4221(a) of such Code (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081 (at the Highway Trust Fund financing rate)".

(B) Subparagraph (C) of section 1703(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(C) Subsection (a) of section 4221 (relating to certain tax-free sales) is amended—

"(i) by inserting 'or section 4081 (at the Highway Trust Fund financing rate)' before 'section 4121' in the 1st sentence, and

"(ii) by striking out '4071, or 4081 (at the Highway Trust Fund financing rate)' in the last sentence and inserting in lieu thereof 'or 4071'."

(5) Paragraph (2) of section 6416(b) of such Code is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 522. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding after section 9507 the following new section:

"SEC. 9508. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4041(d) (relating to additional taxes on motor fuels),

"(2) taxes received in the Treasury under section 4081 (relating to tax on gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section,

"(3) taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under such section, and

"(4) amounts received in the Treasury and collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of the Superfund Amendments and Reauthorization Act of 1986.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Superfund Amendments and Reauthorization Act of 1986 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9507 the following new item:

"Sec. 9508. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART III—COORDINATION WITH OTHER PROVISIONS OF THIS ACT

SEC. 531. COORDINATION.

Notwithstanding any provision of this Act not contained in this title, any provision of this Act (not contained in this title) which—

(1) imposes any tax, premium, or fee,

(2) establishes any trust fund, or

(3) authorizes amounts to be expended from any trust fund,

shall have no force or effect.

And the House agree to the same.

That the House recede from its amendment to the amendment of the Senate to the title of the bill.

From the Committee on Energy and Commerce for consideration of titles I–III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

JOHN D. DINGELL.
JAMES J. FLORIO.
DENNIS E. ECKART.
RALPH M. HALL.
BILLY TAUZIN.
AL SWIFT.

From the Committee on Energy and Commerce:

Solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment:

RON WYDEN.

Solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

THOMAS J. TAUKE.
NORMAN F. LENT.
DON RITTER.

From the Committee on Energy and Commerce solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

JACK FIELDS.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

JAMES J. HOWARD.
GLENN M. ANDERSON.
ROBERT A. ROE.
JOHN BREAUX.
NORMAN MINETA.
BOB EDGAR.
GENE SNYDER.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

ARLAN STANGELAND.
NEWT GINGRICH.

From the Committee on Public Works and Transportation for consideration of title III of the House amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

ROBERT A. ROE.
BOB EDGAR.
ARLAN STANGELAND.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

DAN ROSTENKOWSKI.
J.J. PICKLE.
C.B. RANGEL.
PETE STARK.
THOMAS J. DOWNEY.
MARTY RUSSO.
DONALD J. PEASE.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

GUY VANDER JAGT.
BILL FRENZEL.

From the Committee on Merchant Marine and Fisheries for consideration of sections 104, 107, 108, 111, 113, 116, 121, 122, and 127 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BOB DAVIS.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BARBARA A. MIKULSKI.
MIKE LOWRY.
BILLY TAUZIN.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

BOB DAVIS.
NORMAN F. LENT.

From the Committee on the Judiciary for consideration of sections 107, 113, 117, 119, and 122, of title I and sections 203 and 206 of title II of the House amendment to the Senate amendment, and modifications committed to conference:

PETER W. RODINO.
DAN GLICKMAN.
HAMILTON FISH, Jr.
THOMAS N. KINDNESS.

From the Committee on Armed Services for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

DAVE MCCURDY,
DAVID O'B. MARTIN,
Managers on the Part of the House.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

ROBERT T. STAFFORD.
JOHN H. CHAFEE.
ALAN K. SIMPSON.
GORDON J. HUMPHREY.
PETE V. DOMENICI.
DAVID DURENBERGER.
LLOYD BENTSEN.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

DANIEL PATRICK MOYNIHAN.
GEORGE MITCHELL.
MAX BAUCUS.
FRANK R. LAUTENBERG.

From the Committee on Finance for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments:

BOB PACKWOOD.
BOB DOLE.
WILLIAM V. ROTH, Jr.
RUSSELL B. LONG.
LLOYD BENTSEN.

From the Committee on the Judiciary for the purpose of joining in the consideration of sections 135, 143, 144, and to the extent it may affect the Federal courts or relate to claims against the United States, section 150, together with such amendments related directly thereto as may have been adopted by the House:

STROM THURMOND,
ARLEN SPECTER,
EDWARD M. KENNEDY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

SECTION 1—SHORT TITLE AND TABLE OF CONTENTS

Senate amendment—The short title of the Senate amendment is the "Superfund Improvement Act of 1985".

House amendment—The short title of the House amendment is the "Superfund Amendments of 1985".

Conference substitute—The short title of the conference substitute is the "Superfund Amendments and Reauthorization Act of 1986". The table of contents in the conference substitute was changed to conform to the changes in the text.

SECTION 2—CERCLA AND ADMINISTRATOR

Senate amendment—The Senate amendment has no comparable provision.

House amendment—The House amendment defines the term "CERCLA" as being the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the term "Administrator" as being the Administrator of the Environmental Protection Agency.

Conference substitute—The conference substitute adopts the House provision. The term "CERCLA" refers to the 1980 Act, as amended, and references in CERCLA to "this Act" include the amendments made by the Superfund Amendments and Reauthorization Act of 1986.

SECTION 3—LIMITATION ON CONTRACT AND BORROWING AUTHORITY

Senate amendment—The Senate amendment has no comparable provision.

House amendment—The House amendment states that authorities provided by the House amendment are effective only to such extent as monies are provided in appropriations Acts.

Conference substitute—The conference substitute adopts the House provision. The amendment does not diminish any obligation of the United States under current law.

SECTION 4—EFFECTIVE DATE

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision establishing the effective date for the requirements of the Superfund Amendments and Reauthorization Act of 1986. The general rule is that the requirements of ttles I, II, III, and IV of the

Act take effect on the date of enactment. There are, however, two exceptions to the general rule.

First, if otherwise specified in the Act, the requirements would take effect on the date so specified.

Second, special rules apply with respect to section 121 of CERCLA (relating to cleanup standards). The requirements of section 121 do not apply to a remedial action for which the record of decision was signed (or the consent decree was lodged) prior to the date of enactment. The requirements of section 121 apply to the maximum extent practicable to a remedial action for which the record of decision is signed (or the consent decree is lodged) within the 30-day period immediately following enactment of the Act, and the EPA Administrator must certify in writing that such requirements have been complied with to the maximum extent practicable. The requirements of section 121 apply without qualification to a remedial action for which the record of decision is signed (or the consent decree is lodged) after the 30-day period immediately following enactment of the Act. In addition, the requirements of section 121 apply without qualification to any remedial action for which a record of decision was signed (or the consent decree was lodged) before enactment of the Act and is reopened after enactment of the Act to modify or supplement the selection of the remedy.

The Conferees were informed that approximately 18 sites would reach the point of decision during the 30-day period immediately following enactment of the Act, assuming an enactment date of September 1, 1986.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

Section 101—Amendments to CERCLA Definitions

RELEASE

Senate amendment—The Senate amendment does not contain any comparable provision.

House amendment—The House amendment proposes to amend section 101(22) of CERCLA, which is the definition of "release," to explicitly incorporate "the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant."

Conference substitute—The conference substitute adopts the House proposal. This amendment to CERCLA confirms and clarifies the President's present authority under existing law to take response action with regard to such receptacles, whether or not they have broken open and are currently leaking hazardous substances, pollutants or contaminants. The phrase "containing any hazardous substance or pollutant or contaminant" includes residues of such hazardous substance or pollutant or contaminant.

REMEDIAL ACTION

Senate amendment—The Senate amendment proposes to amend section 101(24) of CERCLA, which is the definition of "remedy or remedial action," to explicitly include the off-site transport, storage or secure disposition of hazardous substances, pollutants or contaminants.

House amendment—The House amendment contains a provision identical to that of the Senate.

Conference substitute—The conference substitute adopts the identical provisions.

RESPONSE

Senate amendment—The Senate amendment does not contain any provision comparable to that of the House amendment.

House amendment—The House amendment proposes to modify CERCLA section 101(25), which is the definition of "response," to explicitly include enforcement activities.

Conference substitute—The conference substitute adopts the House proposal. This amendment clarifies and confirms that such costs are recoverable from responsible parties, as removal or remedial costs under section 107.

POLLUTANT OR CONTAMINANT

Senate amendment—The Senate amendment does not contain any provision comparable to that of the House amendment.

House amendment—The House amendment proposes to relocate the definition of "pollutant or contaminant" from section 104(a)(2) of CERCLA, which is its current placement, to section 101, which is the law's definitions section.

Conference substitute—The conference substitute adopts the House amendment. This provision does not expand CERCLA liability concerning pollutants, contaminants or hazardous substances, found in current law.

OWNER OR OPERATOR: DEFINITION OF STATE

Senate amendment—The Senate amendment contains no provision comparable to that of the House amendment.

House amendment—The House amendment amends section 101(27) of CERCLA, which is the definition of "State," to exclude units of local government.

Conference substitute—The conference substitute does not include the House amendment to the definition of "State," leaving it to the court's interpretation of this provision.

OWNER OR OPERATOR: STATE OR LOCAL GOVERNMENT LIMITATION

Senate amendment—The Senate amendment proposes to modify section 101(20) of CERCLA, which is the definition of "owner or operator," to exclude a State or local government which acquired title or possession involuntarily and by virtue of its function as sovereign.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision, with a modification to clarify that if the unit of government caused or contributed to the release or threatened release in question, then such unit is subject to the provisions of CERCLA, both procedurally and substantively, as any non-governmental entity, including liability under section 107 and contribution under section 113.

ALTERNATIVE WATER SUPPLIES

Senate amendment—The Senate amendment proposes the addition to section 101 of CERCLA the definition of the term, "alternative water supplies."

House amendment—The House amendment does not contain any comparable provision.

Conference substitute—The conference substitute adopts the Senate amendment.

INDIAN TRIBE

Senate amendment—The Senate amendment amends section 101(16) of CERCLA, which defines "natural resources," to include as the owner, manager, or trustee of such resources any Indian tribe or, in certain instances, any member of an Indian tribe.

The Senate amendment also adds a new section 101(36) defining "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services by the United States to Indians because of their status as Indians.

House amendment—The House amendment contains similar provisions.

Conference substitute—The conference substitute adopts the Senate provisions.

LANDOWNER LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a proposed modification of the third-party defense to liability of section 107(b)(3). The purpose of the House amendment was to eliminate liability which might exist under section 107 for landowners who acquired title to real property after the time hazardous substances, pollutants or contaminants had come to be located thereon and who, although they had exercised due care with respect to discovering such materials, were nonetheless ignorant of their presence.

Conference substitute—The conference substitute adds to section 101 of CERCLA, which is the definitions section, a new term, "contractual relationship." This new definition of contractual relationship is intended to clarify and confirm that under limited circumstances landowners who acquire property without knowing of any contamination at the site and without reason to know of any contamination (or as otherwise noted in the amendment) may have a defense to liability under section 107 and therefore should not be held liable for cleaning up the site if such persons satisfy the remaining requirements of section 107(b)(3). A person who acquires property through a land contract or deed or other instrument transferring title or possession that meets the requirements of this definition may assert that an act or omission of a third party should not be considered to have occurred in connection with a contractual relationship as identified in section 107(b) and therefore is not a bar to the defense.

In the limited circumstances identified in this definition, such landowners are entitled to the defense if they exercise the requisite due care upon learning of such release or threat of release. For example, where the release or threat of release is caused by an act of vandalism, the landowner may be able to assert the defense where he exercises due care and takes satisfactory precautions against foreseeable acts as discussed below.

The Conferees recognize that the due care requirement embodied in section 107(b)(3) only requires such person to exercise that degree of due care which is reasonable under the circumstances. The requirement would include those steps necessary to protect the public from a health or environmental threat. Finally, the precautions against foreseeable acts of third parties requirement of section 107(b)(3)(b) does not prevent a subsequent purchaser after contamination has occurred from claiming the defense, but only comes into play after the landowner acquires the property. Foreseeability must be considered in light of the specific circumstances of each case. The provisions of section 101(35)(B) as to "reason to know" govern the purchaser's responsibility with regard to acts of third parties prior to the purchase.

Nothing in this provision shall affect the liability of an owner or operator whose property is taken by a government exercising its eminent domain authority by purchase or condemnation. The owner or operator is not relieved of liability under this Act if he would otherwise have been liable had the purchase or condemnation not occurred. Furthermore, a government authority acquiring property by such methods shall notify, in a timely manner, the United States Environmental Protection Agency and the Department of Justice upon discovering the existence of a hazardous substance on the property. In cases involving government purchase or condemnation, the cost of response may be offset against the just compensation due to the landowner, if any.

The duty to inquire under this provision shall be judged as of the time of acquisition. Defendants shall be held to a higher standard as public awareness of the hazards associated with hazardous substance releases has grown, as reflected by this Act, the 1980 Act and other Federal and State statutes.

Moreover, good commerical or customary practice with respect to inquiry in an effort to minimize liability shall mean that a reasonable inquiry must have been made in all circumstances, in light of best business and land transfer principles.

Those engaged in commercial transactions should, however, be held to a higher standard than those who are engaged in private residential transactions. Similarly, those who acquire property through inheritance or bequest without actual knowledge may rely upon this section if they engage in a reasonable inquiry, but they need not be held to the same standard as those who acquire property as part of a commercial or private transaction, and those who acquire property by inheritance without knowing of the inheritance shall not be liable, if they satisfy the remaining requirements of section 107(b)(3).

Finally, the provision makes clear that this definition does not alter the liability of any person who would otherwise be liable under this Act. If a person transfers property with actual knowledge of the release or threatened release without disclosing such knowledge, such person may not avail himself or herself of a section 107(b)(3) defense. However, transferring property with disclosure does not provide a person with a defense, if such person is otherwise liable.

SECTION 102—REPORTABLE QUANTITIES

Senate amendment—The Senate amendment contains no comparable provison.

House amendment—The House amendment requires the Administrator to promulgate regulations establishing reportable quantities for releases of hazardous substances by December 31, 1986.

Conference substitute—The conference substitute adopts the House provision as modified. The substitute requires promulgation of final reportable quantity regulations by December 31, 1986, for those hazardous substances for which proposed regulations were published on or before March 1, 1986. For all hazardous substances for which proposed regulations were not published before March 1, 1986, the President is required to publish proposed regulations not later than December 31, 1986, and promulgate final regulations not later than April 30, 1988.

SECTION 103—NOTICES; PENALTIES

Senate amendment—The Senate amendment amends section 103 to require notification of any release of a hazardous substance with a reportable quantity of one pound or less (or other quantity determined by the President to potentially require emergency response) to State and local emergency response officials identified under any local contingency plan or otherwise likely to be affected by the release.

House amendment—The House amendment makes a technical amendment to section 103 of CERCLA.

Conference substitute—The conference substitute adopts the House provision. The substitute does not make a substantive change to the notification requirements of section 103 since these matters are dealt with in title III of this bill.

SECTION 104—RESPONSE AUTHORITIES

SUBSECTION (a)(1)—RESPONSE BY POTENTIALLY RESPONSIBLE PARTIES

Senate amendment—Section 112(a) provides the President with the authority to authorize the owner or operator of a vessel or facility from which a release or threat of release emanates, or any other responsible party, to perform remedial or removal actions if the President determines that the action will be done properly.

House amendment—Section 104(b) authorizes the Administrator to allow an owner or operator or other responsible party to carry out removal or remedial actions in accordance with section 122.

The Administrator may allow the person to perform the RI/FS if (1) the person conducting the RI/FS for the responsible party is found to be qualified by the Administrator and (2) the Administrator enters into an oversight contract with any qualified, objective person to oversee and review the conduct of the RI/FS, and (3) the responsible party agrees to reimburse the Fund for any cost incurred under the oversight contract.

Conference substitute—The conference substitute provides that where the President determines that a removal or remedial action will be done properly and promptly by the owner or operator of a facility or vessel or by any other responsible party, the President may allow such person to carry out the action in accordance with section 122. Provided, however, that no remedial investigation or feasibility study (RI/FS) may be authorized except (1) where the President determines that the party is qualified to conduct the RI/FS; (2) the President contracts with or arranges for a qualified person to oversee the conduct of the RI/FS; and (3) the responsible party agrees to reimburse the Fund for any cost incurred by the Administrator under or in connection with the oversight contract. The conference substitute also provides that in no event shall a potentially responsible party be subject to a lesser standard of liability or receive preferential treatment as a response action contractor or as a person hired or retained by a response action contract or with respect to the release or facility in question.

The term "qualified person," refers to someone with the professional qualifications, expertise, and experience necessary to provide additional assurance that the President is conducting meaningful oversight of the remedial investigation and feasibility studies being performed by potentially responsible parties in accordance with section 122. The President retains the principal responsibility to properly oversee the conduct of remedial investigation and feasibility studies and the qualified person is to work for and assist the President. Any such person contracted for or arranged for should be governed by the Agency's standards of ethical conduct relating to conflict of interest.

SUBSECTION (a)(2)—PUBLIC HEALTH THREATS

Senate amendment—Section 112(a) directs the President to give primary attention to those releases which may present a public health threat.

House amendment—Section 104(a) directs the Administrator to give primary attention to those releases which the Administrator deems may present a public health threat.

Conference substitute—The conference substitute adopts the House provision, changing the term "the Administrator" to "the President" to conform to the agreement on the use of the term "Administrator." The text of this provision has been incorporated as the last sentence of section 104(a)(1).

SUBSECTION (b)—REMOVAL ACTION

Senate amendment—The Senate amendment contains no provision relating to removal actions contributing to long-term, permanent remedies.

House amendment—Section 104(c) of the House amendment specifies that any removal action undertaken by the Administrator shall contribute to the efficient performance of any long-term remedial action to the maximum extent practicable.

Conference substitute—The conference substitute adds a new section 104(a)(2) to CERCLA to provide that any removal action undertaken by the President under subsection (a) or by any other person referred to in section 122 should, to the extent the President deems practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned.

The General Accounting Office (GAO) has reported that on several occasions EPA has carried out short-term removal actions without considering how such actions will contribute to the long-term performance of remedial actions at the site. To the maximum extent practicable, the Agency should avoid wasteful, repetitive, short-term removal actions that do not contribute to the efficient, cost-effective performance of long-term remedial actions. This preference for removal actions that contribute to the efficient performance of long-term remedial actions does not constitute a defense to liability under section 107(a).

SUBSECTION (c)—LIMITATIONS ON RESPONSE

Senate amendment—Section 112(b) prohibits the President from undertaking a response action under section 104 in response to a release of a naturally occurring substance in its unaltered form or altered through natural processes; from products which are part of the structure of residential buildings or businesses or community structures which result in exposure in such structures; or into public or private drinking water supplies due to the deterioration of the system through ordinary use. These limitations on response actions will not apply, however, if in the President's discretion the releases constitute a public health or environmental emergency and no other person with the authority and capability to respond will do so in a timely manner.

House amendment—Section 118(a) prohibits the Administrator from responding to releases from (1) residential or business or community structures not used for certain hazardous waste activities; (2) public water supplies due to deterioration of the system through normal use; (3) certain coal mining activities; and (4) certain naturally occurring substances. The Administrator may respond, however, if the release constitutes a major public health or environmental emergency.

Conference substitute—The conference substitute adopts the Senate provision.

SUBSECTION (d)—COORDINATION OF INVESTIGATIONS

Senate amendment—The Senate bill contains no amendment to section 104(b) requiring notice to natural resource trustees.

House amendment—Section 104(d) of the House amendment adds a new paragraph (2) to section 104(b) that directs the Administrator to promptly notify the appropriate Federal and State natural resources trustees of potential damages to natural resources resulting from releases under investigation pursuant to section 104 and to seek to coordinate the assessments, investigations and planning under section 104 with such Federal and State trustees.

Conference substitute—The conference substitute adopts the House provision, changing "Administrator" to "President" to conform to the agreement on the use of the term "Administrator".

SUBSECTION (e)—INITIAL OBLIGATION OF FUND

Senate amendment—Section 113(a) proposes to extend the time limit for initial response actions in section 104(c)(1) from six months to one year, and to provide that the limits on initial response actions would not apply where continued response is otherwise appropriate and consistent with permanent remedy.

House amendment—Section 104(e) raises the limits on response actions in section 104(c)(1) of current law from $1 million dollars or 6 months to $2 million dollars or 12 months, respectively. The House provision also provides that the time and monetary limits on removal actions will not apply where the President determines that continued response action is otherwise appropriate and consistent with the remedial action to be taken.

Conference substitute—The conference substitute adopts the House provision.

SUBSECTION (f)—FACILITIES OWNED AND OPERATED BY STATES

Senate amendment—The Senate provision (section 115) modifies section 104(c)(3)(C)(ii) to specify that the 50 percent cost-sharing requirement (or such greater amounts as the President may determine appropriate) for response actions at facilities owned by a State or political subdivision at the time of any disposal of hazardous substances therein includes facilities that are operated by the State or political subdivision either directly or through a contractual relationship or otherwise. For the purposes of this provision, the term "facility" does not include navigable waters or the beds underlying those waters. Section 115 of the Senate bill also contains a second paragraph relating to State reimbursements for certain costs of remedial actions at facilities owned but not operated by the State.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision relating to the 50 percent cost-sharing requirement for response actions at facilities operated by a State.

SUBSECTION (g)—CROSS REFERENCE TO CLEANUP STANDARDS

Senate amendment—The Senate amendment contains no cross-reference to cleanup standards in section 104(c)(5).

House amendment—Section 104(h) proposes to modify section 104(c)(5) of CERCLA, as redesignated, to direct the Administrator to select remedial actions to carry out section 104 in accordance with section 121 of this Act (relating to cleanup standards).

Conference substitute—The conference substitue adopts the House provision, but retains the current designation of the paragraph as section 104(c)(4).

SUBSECTION (h)—STATE CREDITS

Senate amendment—Section 114 amends the last sentence of section 104(c)(3) by directing the President to credit States for amounts expended or obligated by the State or its political subdivisions after January 1, 1978, and before December 11, 1980, for any response costs covered by section 111(a) (1) or (2) and incurred at a facility or release listed pursuant to section 105(8). The Senate provision also authorizes the President to enter into cooperative agreements with the States under which the States will take response actions in connection with the releases listed pursuant to section 105(8)(B). Finally, the Senate amendment directs the President to credit certain response costs incurred by States.

House amendment—Section 104(g) directs the Administrator to grant credits to States against the share of the costs for which they are responsible under section 104(c)(3) for amounts expended by the States pursuant to agreements with EPA for remedial actions at facilities listed on the NPL. The provision also authorizes credits for expenses of certain remedial actions incurred before the listing of the facility on the NPL or before entry into the contract or cooperative agreement with EPA. Also authorized are credits for funds expended between 1978 and 1980 for cost-eligible response actions and claims for damages compensable under section 111, and certain State expenses after December 11, 1980 but before enactment of this Act. The provision authorizes the Administrator to require prior approval for expenditures made after the date of enactment as a condition of granting credit under section 104(c)(4), and addresses the use of credits to reduce all or part of the share of costs otherwise required to be paid by a State under paragraph (3).

Conference substitute—The conference substitute adopts the House amendment, as modified by deleting section 104(c)(4)(C) of the amendment relating to administrative expenses and redesignated the provision as section 104(c)(5).

Entry into cooperative agreements is within the discretion of the President. State expenditures of funds qualifying for credit towards a State share do not create any entitlement in that State to the Federal share of costs for that facility or any other facility. Nothing in this provision shall require the President to set aside or earmark funds for expenditures in any particular State to satisfy these credit provisions.

Under section 104 the President, acting through the Environmental Protection Agency or any Federal agency acting pursuant to an agreement with the Environmental Protection Agency (such as the Corps of Engineers), can fund multi-year remedial projects on an annual basis after obligating the entire cost of implementing the Record of Decision. In such a case the State may transfer the funds that it has committed to the project on an incremental basis, and be credited with interest earned prior to actual application of the funds as work progresses.

SUBSECTION (i)—TREATMENT OF CERTAIN ACTIVITIES AS MAINTENANCE OR REMEDIAL ACTION

Senate amendment—Section 117 specifies that, for the purposes of section 104(c)(3), completed remedial actions in the case of ground or surface water contamination include the completion of treatment or other measures, whether onsite or offsite, necessary to restore ground or surface water quality to a level that assures protection of human health and the environment. The operation of such measures for a period of up to five years after the construction and installation of the operation shall be considered remedial action, whereas activities required to maintain the effectiveness of such measures following that period or the completion of the remedial action, whichever is earlier, shall be considered operation or maintenance. At such time as the dedicated tax under title V, or revenues derived therefrom, cease to be available due to termination, expiration or repeal of such tax, sums recovered or recoverable under section 107 shall be available for operation and maintenance.

House amendment—Section 104(i) proposes a new paragraph (6) to section 104(c) of CERCLA specifying that, in the case of groundwater or surface water contamination, completed remedial action includes the treatment or other measures, whether taken onsite or offsite, that are necessary to restore groundwater and surface water quality to a level that assures protection of human health and the environment. Actions required to maintain such measures following the completion of the remedial action shall be considered maintenance.

Conference substitute—The conference substitute adopts the Senate provision, modifying from five years to ten years the period during which time the activities are to be considered part of the remedial action.

SUBSECTION (j)—RECONTRACTING

Senate amendment—Section 113(b) provides that nothing in the Act shall limit the President from taking such action as may be necessary to assure continuous remedial action or to institute interim remedial action when it becomes necessary to reopen bidding or otherwise recontract for further performance of the remedial action.

House amendment—The House amendment contains no provision on recontracting.

Conference substitute—The conference substitute provides a new paragraph (8) to section 104(c) of CERCLA that authorizes the President to undertake or continue whatever interim remedial actions the President determines are appropriate to reduce risks to public health or the environment where the performance of a complete remedial action requires recontracting because of the discovery of sources, types or quantities of hazardous substances not known at the time of entry into the original contract. These interim actions, however, may not exceed $2 million dollars.

This provision clarifies the President's existing authority to respond to releases of hazardous substances under section 104, although the $2 million cap on interim responses pending recontracting is a new restriction. The provision is intended to address situations like the Re-solve Site at North Dartmouth, Massachusetts.

SUBSECTION (k)—SITING

Senate amendment—The Senate amendment amends section 104(c) by adding a new paragraph providing that, effective three years after enactment, the President shall not provide any remedial actions pursuant to section 104 unless the State provides assurances that there will be adequate capacity and access to facilities in compliance with the hazardous waste regulatory program under subtitle C of the Solid Waste Disposal Act for the treatment or disposal of all that State's hazardous wastes for the next twenty years.

House amendment—Section 104(f) of the House amendment modifies section 104(c)(3) of CERCLA by adding an additional requirement that States assure the Administrator of the availability of hazardous waste treatment or disposal facilities that (1) have adequate capacity to accommodate the hazardous wastes that are expected to be generated within the State within the 20-year period following the date of a contract or cooperative agreement with the Administrator; (2) are within the State or outside the State in accordance with an interstate agreement or regional agreement; (3) are acceptable to the Administrator; and (4) are in compliance with subtitle C of the Solid Waste Disposal Act.

Conference substitute—The conference substitute adopts the virtually identical House and Senate provisions requiring States to provide assurances to the President of the availability of hazardous waste treatment or disposal facilities with adequate capacity to accommodate the wastes expected to be generated within the State. The reference to "hazardous wastes" in this siting requirement is intended to cover all hazardous wastes generated within the State, not only Superfund wastes generated by response or remedial actions undertaken within the State.

SUBSECTION (l)—COOPERATIVE AGREEMENTS WITH STATES

Senate amendment—Section 119 authorizes the President to enter into a contract or cooperative agreement with any State or political subdivision which has the capability to carry out any or all of the actions authorized under section 104, as determined by the President to take such actions in accordance with section 105(8). Such cooperative agreements may reimburse State or political subdivisions from the Fund for reasonable response costs or related activities, as enumerated in the Senate provision. Any contract or cooperative agreement is subject to the cost-sharing requirements of section 104(c).

House amendment—Section 104(j) modifies section 104(d)(l) of CERCLA to provide that, where the Administrator determines that a State or political subdivision has the capability to conduct any or all actions authorized by section 104 in accordance with section 105(a)(8) and carry out related enforcement actions, the Administrator may enter into a contract or cooperative agreement with the State or political subdivision to carry out such actions. The provision directs the Administrator to make such determinations within

90 days after the Administrator receives an application for such an agreement from a State or political subdivision. The provision further specifies that any State which expended funds between September 30, 1985, and the date of enactment of this bill for response actions at any site included on the NPL and subject to a cooperative agreement under the Act shall be reimbursed for the share of costs of such actions for which the Federal government is responsible.

Conference substitute—The conference substitute adopts the House provision with the addition of Indian tribes to section 104(d)(1), as amended. A decision by the President to enter into a contract or cooperative agreement is within the discretion of the President. Included within the class of activities that may be the subject of cooperative agreements under this provision are those activities associated with the overall implementation, coordination, enforcement, training, community relations, site inventory and assessment efforts, and administration of remedial activities as authorized by this Act.

SUBSECTION (m)(1)—INFORMATION-GATHERING AND ACCESS AUTHORITIES

Senate amendment—Section 120 proposes four new paragraphs to section 104(e) pertaining to access and information-gathering. Paragraph (1) authorizes any authorized representative of the President or a State to require any person to disclose information relevant to the identity and nature of materials at a facility or the nature and extent of a release or threatened release from the facility where there is reason to believe that there may be a release or a threatened release of a hazardous substance from that facility. In addition, the paragraph requires the person to provide reasonable access to the authorized representative to inspect or copy all documents and records pertaining to such matters. The paragraph also authorizes access to certain establishments or other places or properties to inspect and obtain samples under certain conditions.

Paragraph (2) provides the terms and conditions under which the President may compel compliance with such a request for access or information. Paragraph (2) also directs courts to compel compliance with this paragraph where there is a reasonable basis to believe that there is a release or threatened release of a hazardous substance unless, under the circumstances, the demand for access or information is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. The provision authorizes up to a $10,000 civil penalty against any person who unreasonably fails to comply with the provision of paragraph (1) or an order issued under paragraph (2).

Paragraph (3) contains a "savings" clause, while paragraph (4) details provisions relating to the terms and conditions for entry to locations and access to information properly classified to protect the national security. Paragraph (5) details the requirements applicable to any person who claims that the information sought is entitled to protection under this section.

Paragraph (6) outlines the types of information that will not be entitled to protection from disclosure under this section.

House amendment—Section 104(k) proposes to modify section 104(e) of CERCLA by redesignating paragraph (2) as paragraph (8) and by adding new subsections 104(e)(1)-(7) relating to information-gathering and access. Paragraph (e)(1) authorizes any duly authorized representative of the Administrator to exercise the authorities under paragraphs (2), (3), or (4) of this subsection in accordance with certain enumerated restrictions. Any duly designated State official under a cooperative agreement or contract may use the authorities in paragraphs (2) through (4). Paragraph (2) authorizes access to information or documents described in three subparagraphs pertaining, in general, to the nature and quantity of materials at the vessel or facility, the nature or extent of the release from the vessel or facility, and other information relating to the ability of a person to pay for or perform a cleanup. The paragraph also authorizes access at all reasonable times to inspect or copy the documents relevant to such matters. When the authorized representative requests copies of documents as authorized by this action, the person with such documents must either provide the copies or furnish the documents themselves for copying. Paragraph (3) pertains to entry, authorizing an officer or employee of the Administrator or State to enter certain vessels or facility enumerated within the paragaph. Paragraph (4) pertains to inspections and samples, authorizing any duly authorized representative of the Administrator or State to inspect and obtain samples from any vessel, facility or other location described in the paragraph. The paragraph requires that a copy of the results of any analysis of samples taken pursuant to the paragraph shall be furnished to the owner, operator, tenant, or other person in charge of the location from which the samples were obtained. Paragraph (5) outlines the authorities of the Administrator to issue compliance orders and to request the Attorney General to commence civil actions to compel compliance with such orders or requests for information or access pursuant to this section. Where there is a reasonable basis to believe that a release or threat of release may occur, the paragraph describes the actions a court shall order in any civil action to compel compliance. The paragraph authorizes a civil penalty not to exceed $25,000 for each day of noncompliance. Paragraph (6) includes a savings clause that clarifies that the subsection is not intended to preclude the Administrator from securing access or obtaining information in any other lawful manner, whereas paragraph (7) requires appropriate clearances for any officers or representatives of the Administrator to gain entry to locations and access to information properly classified to protect the national security.

Conference substitute—The conference substitute adopts the House language with the following modification. First, in paragraph (5)(B) (i) and (ii), the conference substitute includes the Senate language specifying that a court shall not take action where under the circumstances of the case the demand for access or information is arbitrary and capricious, an abuse of discretion or not otherwise in accordance with law. Secondly, paragraph (e)(7), relating to clearance, has been deleted.

SUBSECTION (m)(2)—BASIS FOR WITHHOLDING INFORMATION

Senate amendment—Section 120 proposes to add new paragraphs (5) and (6) to section 104(e) of CERCLA. Paragraph (5) details the terms and conditions under which a person required to provide information or documents under the Act may claim that the information is entitled to protection from disclosure. The Senate bill would require the person claiming such protection to show, at the time the claim is made, that the information is entitled to protection on the basis of certain criteria.

House amendment—The House amendment contains no amendment to section 104 relating to the basis for withholding information.

Conference substitute—The conference substitute adds two new subparagraphs (E) and (F) to section 104(e)(8) of CERCLA relating (1) to the basis for withholding information and (2) to information not entitled to protection under the section. The first subparagrpah conforms to the conference agreement in title III, relating to Emergency Planning and Community Right-to-Know. The second subparagraph is derived from the Senate provision with certain modifications.

SUBSECTION (n)—ACQUISITION OF PROPERTY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 104(n) proposes to add a new subsection to section 104 authorizing EPA to acquire by purchase, lease, condemnation, or otherwise any real property or interest in real property that the Adminstration determines is needed to conduct a remedial action under this Act during the remedial action itself or prior to it in conjunction with an investigation or removal action. The decision of the Administrator under this provision is discretionary. The provision allows the Administration to acquire such interest in real estate only if the State in which the interest is to be acquired assures the Administrator that the State will accept transfer of the interest following completion of the remedial action. The provision also provides that no Federal, State, or local government agency shall be liable under this Act solely as a result of acquiring an interest in real estate under this subsection. This provision does not limit the President's existing authority to acquire real property by purchase, lease or condemnation when necessary to carry out response actions authorized by section 104.

Conference substitute—The conference substitute adopts the House provision. If the President obtains access to property under section 104(e) to effectuate a response and the President determines that the response will result in the taking of private property, the President will exercise the property acquisition authority provided under this amendment to section 104. In addition, even if this authority is not exercised, persons who believe that their property has been taken by response action may seek compensation under the Tucker Act, 28 U.S.C. 1491.

SECTION 105—NATIONAL CONTINGENCY PLAN

Senate amendment.—The Senate amendment requires the President to revise the National Hazardous Substance Response Plan not later than twelve months after the date of enactment of these amendments to provide procedures and standards for remedial actions undertaken pursuant to CERCLA which are consistent with the amendments made by this Act.

This amendment requires the President by rule, not later than twelve months after the date of enactment of these amendments, to promulgate amendments to the Hazard Ranking System in effect on September 1, 1984. These amendments shall assure to the maximum extent feasible, the Hazard Ranking System accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. These amendments shall take effect as of the date established by the President, not later than eighteen months after the enactment of the Superfund Amendments of 1984. The amended Hazard Ranking System shall be applied to any site or facility to be newly listed on the National Priority List after the effective date of the amendments. The Hazard Ranking System in effect on September 1, 1984, shall continue in full force and effect until the new regulations are in effect.

The Senate amendment eliminates the requirement that the National Contingency Plan include at least 400 facilities and clarify that States are allowed only one highest priority designation for the life of the list. The Senate amendment adds a new requirement to include standards and testing procedures by which alternative or innovative treatment technologies are appropriate for utilization in response actions.

House amendment.—The House amendment requires the Administrator within 18 months of the date of enactment to revise the National Contingency Plan to reflect the amendments made by this legislation.

The House amendment requires the Administrator to commence a review of the Hazard Ranking System (HRS or "Mitre Model") used to evaluate the priorities attached to Superfund sites not later than 12 months after the enactment of the Superfund Amendments of 1986. In conducting the review, the President shall ensure that the human health risks associated with contamination or potential contamination of surface water used for recreation or potable water consumption is appropriately assessed.

The House amendment provides that in conducting the Hazard Ranking System review, the Administrator must evaluate the preliminary pollutant limit value system used by the Department of Defense and compare it with the Hazard Ranking System.

The House amendment explicitly provides that the Administrator is not required to reevaluate after enactment of this Act the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of CERCLA before such enactment.

The House amendment establishes the right of any person to petition the Administrator to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant. Within 12 months, the Administrator must complete such assessment or explain why such an assessment is not appropriate. If the preliminary assessment indicates that any such release may pose a threat to human health or the environment, the Administrator must promptly evaluate the release for possible inclusion on the National Priorities List.

The House amendment adds new criteria to the current law to be used in determining priority facilities: the damage to natural resources which may affect the human food chain and the contamination or potential contamination of the ambient air which is associated with a release or threatened release.

The House amendment also adds a new requirement to include standards and testing procedures by which alternative or innovative treatment technologies are appropriate for utilization in response actions.

The House amendment adds a new requirement that whenever there has been a significant release of a hazardous substance or pollutants and contaminants from a site which is listed by the President as a site cleaned up on the National Priorities List, the site shall be restored to the National Priorities List without application of the Hazard Ranking System.

The House amendment requires the Administrator to consider the availability of qualified minority firms. The Administrator shall describe, as part of any annual report submitted to the Congress under CERCLA, the participation of minority firms.

The House amendment allows the States to place only one highest priority site on the National Priorities List and deletes the requirement in current law that the National Priorities List contain no fewer than 400 sites to the extent practicable.

Conference substitute—The conference substitute adopts provisions from both the House and Senate amendments. The conference substitute adopts the Senate amendment requiring the President to revise the National Contingency Plan, changing 12 months to 18 months. To the extent there is an inconsistency between the current National Contingency Plan, including the National Hazardous Substance Response Plan, and the provisions or requirements of the Superfund Amendments and Reauthorization Act, this Act supersedes and controls as of the date of enactment.

The conference substitute adopts the Senate amendment requiring the President to promulgate, by rule, amendments to the Hazard Ranking System in effect to assure, to the maximum extent feasible, that the Hazard Ranking System accurately assesses the relative degree of risk to human health and environment posed by sites and facilities subject to review. The promulgation date is changed from 12 months after enactment of these amendments to 18 months and changing the effective date of these amendments from 18 months to 24 months.

This provision establishes a substantive standard for the Hazard Ranking System that, to the degree feasible, it accurately assesses relative risks to human health and the environment. This standard is to be applied within the context of the purpose for the National Priorities List; i.e., identifying for the States and the public those facilities and sites which appear to warrant remedial actions. (See "Report of the Committee on Environment and Public Works," Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980).) This standard does not, however, require the Hazard Ranking System to be equivalent to detailed risk assessments, quantitative or qualitative, such as might be performed as part of remedial actions. The standard requires the Hazard Ranking System to rank sites as accurately as the Agency believes is feasible using information from preliminary assessments and site inspections, such as ground or surface water, or air monitoring data or the equivalent information and identification of potentially and actually contaminated water supplies or sensitive environments. Meeting this standard does not require long-term monitoring or an accurate determination of the full nature and extent of contamination at sites or the projected levels of exposure such as might be done during remedial investigations and feasibility studies. This provision is intended to ensure that the Hazard Ranking System performs with a degree of accuracy appropriate to its role in expeditiously identifying candidates for response actions.

The review of the Hazard Ranking System needs to adequately consider the quantity, toxicity, and concentrations of hazardous constituents, which are present in any release, or threatened release; the extent of actual release and the potential for release of such hazardous constituents; and the exposures presented, or likely to be presented, to human populations and the environment, by the release or threatened release of such hazardous constituents through various routes of exposure.

Neither the revised Hazard Ranking System required by this section nor any other provision of law or regulation requires the conduct of risk assessments at unlisted or listed facilities.

The conference substitute adopts the House amendment requiring the President to ensure that the human health risks associated with contamination or potential contamination of surface water used for recreation or potable water consumption is appropriately assessed.

In conducting the review under this section, the Administrator shall evaluate the preliminary pollutant limit value system used by the Department of Defense to assess the risks of hazardous substances and compare such system with the Hazard Ranking System. In particular, the Administrator should study the effectiveness of each system in appropriately assessing the relative degree of risk to human health and the environment posed by facilities subject to each such system.

The President in conducting the review required by this provision should include the following items:

(1) an explanation of the Hazard Ranking System, including the manner in which it was developed and the method of determining the relative hazard at different facilities under the system;

(2) a determination of the relationship between the value determined for a facility under the Hazard Ranking System and the potential danger to human health and the environment;

(3) an examination, based on the determination under clause (2), of the effect of establishing a threshold value of 28.5 for facilities to be included on the National Priorities List;

(4) a determination based upon the determination under clause (2) and the examination under clause (3), of whether a new threshold value should be established for inclusion of facilities on such list; and

(5) a determination of the relationship between the value determined for a facility under the Hazard Ranking System and the types of remedial actions that are appropriate at such facility.

The conference substitute adopts the Senate amendment which provides that until the effective date of regulations revising the Hazard Ranking System, the system in effect on September 1, 1984, continues in full force and effect.

The conference substitute adopts the House amendment, as modified, which provides that the President is not required to reevaluate the hazard ranking of any facility which was evaluated in accordance with the criteria under section 105 of CERCLA before the effective date of the amendments to the Hazard Ranking System contemplated by this section.

The conference substitute adopts the House amendment establishing the right of any person to petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with a release or threatened release of a hazardous substance, pollutant or contaminant.

The conference substitute adopts the House amendment adding a new criterion to the current law to be used in determining priority facilities: the damage to natural resources which may affect the human food chain and the contamination or potential contamination of the ambient air which is associated with a release or threatened release.

The conference substitute adopts the House amendment which is similar to the Senate amendment deleting the requirement in the current law that the National Priorities List contain no fewer than 400 sites.

The conference substitute adopts the House amendment regarding the use of alternative and innovative technology.

The conference substitute adopts the House amendment requiring the relisting of sites on the National Priorities List without application of the Hazard Ranking System whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up To Date."

The conference substitute adopts the House amendment requiring the President to consider the availability of qualified minority firms.

SUBSECTION (g)—SPECIAL STUDY WASTES

Senate amendment—The Senate amendment to section 105 provides that, until the Hazard Ranking System is revised, special study waste sites described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act may be listed on the National Priorities List only if the Administrator makes findings based on facility-specific data. Liability for costs, damages, or penalties may only be imposed if specific findings have been made and the Administrator supports those findings in court. Following completion of the study and determinations required by the Solid Waste Disposal Act, if a special study waste is not a hazardous waste listed under section 3001 of the Solid Waste Disposal Act, the waste stream, or one of the constituents thereof, may not be deemed to be a hazardous substance unless such waste, at the facility in question, has one of the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.

House amendment—The House amendment contains a provision which applies only to fly-ash and other wastes described in section 3001(b)(3)(A)(i).

The Administrator is required to revise the Hazard Ranking System (HRS) as it applies to facilities that contain substantial volumes of fly-ash and other wastes discussed in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels in a manner which assures appropriate consideration of site-specific characteristics of such facilities.

Prior to the completion of the required revision of the Hazard Ranking System, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constitutents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

Conference substitute—The conference substitute adds a new provision to section 105 dealing with special study wastes other than wastes described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act.

Pending revision of the Hazard Ranking System, the President must consider certain factors in adding facilities at which special study wastes described in paragraphs (2), (3)(A)(ii) or (3)(A)(iii) of section 3001(b) of the Solid Waste Disposal Act are present in significant quantities. Facilities included on, or proposed for inclusion on, the National Priorities List are not subject to this provision. The President must only consider available information.

In the course of determining whether to add facilities containing special study wastes to the NPL in the interim period, if the President has sampling data from past or present on-site or off-site examination of the facility or releases from the facility available, he shall consider it.

Neither the revised Hazard Ranking System required by this section nor any other provision of law or regulation requires the conduct of risk assessments at unlisted or listed facilities.

Nothing in this amendment affects or otherwise limits the President's authority under this Act to conduct response or enforcement actions (including abatement actions under section 106(a)).

SECTION 106—REIMBURSEMENT

Senate amendment—Section 144 of the Senate amendment contains a provision that amends section 106(b) of CERCLA to authorize the reimbursement of potentially responsible parties for response costs under certain circumstances.

House amendment—Section 113 of the House amendment contains a provision on reimbursement comparable to that set forth in the Senate amendment. The House amendment is also drafted as an amendment to section 106(b) of CERCLA.

Conference substitute—The conference substitute adopts new section 106(b)(2) of CERCLA as set forth in the House amendment, with modifications. This new provision authorizes reimbursement for certain parties and the procedures for obtaining such reimbursement.

SECTION 107—LIABILITY

FOREIGN VESSELS

Senate amendment—The Senate amendment amends sections 107(a)(1) to strike "(otherwise subject to the jurisdiction of the United States)," making it clear that liability under CERCLA applies to releases from foreign vessels.

House amendment—The House amendment contains an identical provision.

Conference substitute—The conference substitute adopts the identical provisions of both bills.

COSTS AND DAMAGES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment amends section 107(a) to clarify that all costs incurred by the United States or a State under section 104(b) and the costs of any health assessment or health effects study carried out under the expanded health authorities provisions, are recoverable costs under section 107. In addition, the House amendment provides that amounts recoverable under section 107 include interest accruing from 90 days after the date on which an action for recovery of such amounts is filed. The rate of interest is the same as that for investments of the Fund.

Conference substitute—The conference substitute amends section 107(a) to clarify that the costs of any health assessment or health effects study carried out under section 104(i) are recoverable costs under section 107. The reference to section 104(b) costs in the House amendment was deleted, since such costs are defined as costs of response in current law. The conference substitute provides that amounts recoverable under section 107 include interest accruing from the later of the date payment is demanded in writing or the date of the expenditure concerned. The rate of interest is the same as that for investments of the Fund.

EMERGENCY RESPONSE ACTIONS

Senate amendment—The Senate amendment adds a new paragraph to section 107(d) providing that State and local governments are not liable under this Act for non-negligent actions taken in response to an emergency created by the release of a hazardous substance generated by, or from a facility owned by, another person.

House amendment—The House amendment strikes "damages" in section 107(d), inserting "costs and damages," and adding a sentence clarifying that this subsection does not affect the liability of a potentially responsible party who subsequently undertakes a response action. A new paragraph is added, providing that Federal, State, and local government agencies are not liable under this Act for non-negligent actions taken in response to an emergency created by the release of a hazardous substance from a vessel, facility, or site owned by another person. A person retained or hired by a State to take any emergency response action is treated the same as the State.

Conference substitute—The conference substitute amends section 107(d) to provide that a person will not be liable under this Act for their non-negligent actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the NCP or at the direction of an on-scene coordinator. A new paragraph is added, providing that State and local governments are not liable under this Act (other than for costs or damages due to gross negligence or intentional misconduct) for actions taken in response to an emergency created by the release of a hazardous substance generated by, or from a facility owned by, another person. Another new paragraph clarifies that this subsection does not apply to or alter the liability of any potentially responsible party who is otherwise covered by section 107(a).

The conference substitute retains the scope of the Senate version on the types of releases to which subsection (d)(2) applies. Subsection (d)(2) applies not only to emergency actions in response to releases or threatened releases of hazardous substances from a facility owned by a person other than a State or local government, but also to such actions concerning releases of a hazardous substance generated by a person other than a State or local government. If a State or local government nonnegligently causes damage in responding to an emergency arising out of the release of a hazardous substance generated by another person at a site which it controls through bankruptcy or other involuntary acquisition, it will not be liable under this section even though it is considered an "owner" of the facility because it has contributed to the release or threatened release from the facility in the course of responding to the emergency.

NATURAL RESOURCES

Senate amendment—The Senate amendment amends section 107(f) to relocate and modify the provisions of sections 111(h) of current law. Under new section 107(f)(2), the President shall designate in the NCP the Federal officials to act as trustees and to assess natural resource damages for the purposes of this Act and section 311 of the Clean Water Act. Such Federal trustees may, at the request of a State, assess natural resource damages for a State. Subsection (f)(2)(B) clarifies that the Governor may designate State officials to act as trustee and assess natural resource damages for natural resources under State trusteeship. Any determination or assessment of damages to natural resources made by a Federal or State trustee in accordance with the regulations promulgated in accordance with section 301(c) of the Act have the force and effect of a rebuttable presumption on behalf of the trustee in any adminsitrative or judicial proceeding under this Act or section 311 of the Clean Water Act. The President is required to promulgate the regulations required under section 301(c) of CERCLA not later than six months after enactment.

House amendment—The House amendment amends section 107(f) to relocate and modify the provisions of sections 111(h) of current law. Under new section 107(f)(2), the Federal officals designated to act as trustees under the NCP are to assess natural resource damages for the purposes of this Act and section 311 of the Clean Water Act. Such Federal trustees may, at the request of a State, assess natural resource damages for a State. Subsection (f)(2)(B) clarifies that the Governor may designate State officials to act as trustee and assess natural resource damages for natural resources under State trusteeship. Any determination or assessment of damages to natural resources made by a Federal or State trustee in accordance with the regulations promulgated in accordance with section 301(c) of the Act have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act or section 311 of the Clean Water Act. Section 107(f)(1) (as redesignated by this amendment) is amended to authorize the Administrator to retain, without further appropriation, sums recovered by the United States as trustee, and use such sums to restore, replace, or acquire the equivalent of injured natural resources.

Conference substitute—The conference substitute adopts the Senate amendment to section 107(f)(2) and the House amendment to section 107(f)(1), modifying it so that the trustee, rather than the Administrator, retains the recovered funds for use without further appropriation. A trustee may use recovered funds retained under this provision to defray costs expended for damage assessment. In addition, section 107(f) is amended to clarify that there can be no double recovery for the same money damages under this subsection. The conference substitute adopts the Senate provision that directed the President to promulgate the regulations for assessing damages to natural resources under section 301 of CERCLA not later than six months after enactment, but relocates it as an amendment to section 301 itself. The deadline established by these amendments differs from that currently imposed by the court in *New Jersey* v. *Ruckelshaus,* Civil Action No. 84-1668 (JWB) (D.C.N.J. 1984), solely for the purpose of allowing additional time, if necessary, for re-proposal of regulations required by section 301(c) should those initially submitted to the court be inadequate. While acknowledging the failure of the President to promulgate those regulations, this amendment does not sanction that failure or any further delay unless it is essential to assure the adequacy of the regulations. The court is to retain jurisdiction in *New Jersey* v. *Ruckelshaus* to assure compliance with not only this new provision of law, but that of the original requirement as well. Regulations were proposed under this section in December, 1985, and it may be necessary to repropose this regulation to come into conformity with the provisions of section 301(c) and the amendments to section 107(f).

FEDERAL LIEN

Senate amendment—The Senate amendment amends section 107 to provide that all costs and damages for which a person is liable to the United States under this section shall constitute a lien in favor of the United States on all real property and related rights subject to or affected by a response action. Such costs may be recovered in an action in rem in Federal district court.

House amendment—The House amendment amends section 107 to provide that all costs and damages for which a person is liable to the United States under this section shall constitute a lien in favor of the United States on all real property and related rights subject to or affected by a response action. All costs and damages for which the owner or operator of a vessel is liable to the United States under this section shall constitute a maritime lien in favor of the United States on such vessel. Such costs may be recovered in an action in rem in Federal district court.

Conference substitute—The conference substitute adopts the House provision.

SECTION 108—FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment designates acceptable alternative methods of establishing financial responsibility and authorizes the Administrator to specify policy or other contractual terms; sets out defenses available in case of direct action against an insurer arising out of a claim authorized by section 107 or 111; establishes total liability under the Act of any guarantor and provides that nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor.

House amendment—The House amendment establishes a deadline for promulgation of financial responsibility regulations; designates acceptable alternate methods of establishing financial responsibility and authorizes the Administrator to specify policy or other contractual terms; amends the existing phase-in period for imposition of financial responsibility requirements; sets out defenses available in case of direct action against an insurer arising out of vessels and other facilities; establishes total liability under the Act of any guarantor and provides that nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor.

Conference substitute—The conference substitute adopts the House provision with the following changes:

(1) Eliminates the deadline for promulgation of financial responsibility regulations.

(2) Substitutes the following for the provision regarding the total liability of guarantors in a direct action:

The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability

under section 107 for the purpose of satisfying the requirement for evidence of financial responsibility.

SECTION 109—PENALTIES

Senate amendment—The Senate amendment increases existing criminal penalties for various violations and further increases criminal penalties for subsequent violations. In addition, it establishes administrative civil penalties for certain offenses, graduated with increasing severity for subsequent violations. Administrative civil penalties may be assessed after notice and an opportunity for a hearing. District Court review of the penalty is on the record.

House amendment—The House amendment increases existing civil and criminal penalties for various violations and establishes civil penalties as supplements to some of the existing criminal penalty provisions. In addition, several new violations are made subject to civil and criminal penalties. Civil penalties are to be assessed and collected under procedures set forth in section 16 of the Toxic Substances Control Act, which requires formal administrative hearings and Court of Appeals review.

Conference substitute—The conference substitute combines provisions from the House and Senate amendments to provide increased penalties for civil and criminal violations of the law and to provide new authority to assess civil penalties administratively. Monetary fines for criminal violations will, as in the House amendment, be as set forth in the uniform criminal code. The relevant sections of the U.S. Code are currently located in title 18, sections 3623 and 3571. Potential imprisonment will be set at up to three years for first offenses, as in the House amendment, and up to five years for subsequent convictions, as in the Senate amendment. Civil penalties of up to $25,000 per day, increasing up to $75,000 per day for subsequent violations, may be assessed administratively or judicially. Penalties of up to $25,000 per violation may be assessed administratively after notice and an opportunity for a hearing, as set forth in the Senate amendment. Judicial review of such a penalty shall be in the district court and based on the record. Penalties of up to $25,000 per day, increasing for subsequent violations, may be assessed administratively after an opportunity for a formal Administrative Procedures Act hearing. Judicial review of such a civil penalty shall be in the Court of Appeals for the District of Columbia. For any given violation, the government must choose from among the three approaches included in this section: informal administrative process; formal administrative process; or judicial process. A single violation shall not be subject to multiple civil penalties. Civil penalties for failure to comply with information-gathering and access authorities can only be assessed judicially.

The conference substitute provides for criminal penalties of three years/five years for: failure to provide notice of releases under section 103 or submission of information known to be false or misleading; destruction of records in violation of section 103; and, providing false information in claims against the fund under section 112. Monetary fines are set according to the uniform criminal code provisions of Title 18, United States Code, section 3623 (or 3571 if applicable) which provide automatic fines for all offenses. As in the

House amendment, there may be an award of up to $10,000 for information leading to a conviction. Civil penalties apply for each of the following: failure to provide notice of releases as required under section 103 or submission of information under section 103 known to be false or misleading; destruction of records in violation of section 103; failure to comply with section 108 financial responsibility requirements; failure to comply with an order or request under the information-gathering and access authorities of section 104; and, failure to comply with an order, decree or agreement under section 122 (relating to settlements) or section 120 (relating to Federal facilities), including interagency agreements under section 120. The fine under section 106(b) is increased from $5,000 to $25,000.

SECTION 110—HEALTH-RELATED AUTHORITIES

Senate amendment—The Senate amendment is drafted as an amendment to section 104(i) of current law, which established the Agency for Toxic Substances and Disease Registry (ATSDR).

Under the Senate amendment, ATSDR and EPA are jointly required to prepare a list of the hazardous substances most commonly found at Superfund sites. Within 6 months after enactment, ATSDR must list at least 100 such substances. Within 24 months after enactment, ATSDR must list at least 100 additional substances, and must list an appropriate additional number at least once every year thereafter.

The Senate amendment then requires ATSDR to prepare toxicological profiles on listed substances sufficient to establish the likely effect of each substance on human health, and to revise the profiles no less often than once every 5 years.

Where adequate information is not available on the health effects of a listed hazardous substance, the Senate amendment requires the Administrator of ATSDR to assure the initiation of a health effects research program. The Senate provision specifically outlines what should be the basic elements of such a research program, and requires that the Administrators of ATSDR and EPA coordinate the research program with the National Toxicology Program and with toxicological testing undertaken pursuant to the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The Senate amendment expresses the sense of the Congress that the costs of the research program shall be borne by the manufacturers and processors of the hazardous substance in question. Where this is not possible, the Senate amendment establishes that the costs of the research program are defined as a cost of response under section 107 of this Act, so as to be recovered from parties responsible for the release of the hazardous substances.

The Senate amendment requires the Administrator of ATSDR to perform a health assessment for each release, threatened release or facility on the National Priorities List, and establishes a schedule for the completion of such assessments. In addition, health assessments are mandated for facilities under section 3019 of the Solid Waste Disposal Act.

The Senate amendment also establishes a process whereby individuals or physicians may petition the Administrator of ATSDR to perform health assessments. In response to a petition, the Administrator of ATSDR must either initiate the health assessment or provide a written explanation of why one is not appropriate.

The Senate amendment describes a health assessment as including preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on a number of factors, such as the nature and extent of the contamination, potential pathways of human exposure and the size and potential susceptibility of the affected community. The assessment is also required to include an evaluation of the health risks posed by all sources of the contaminants in question, including known point or nonpoint sources other than the subject site or facility, and to use appropriate data available from the Administrator of EPA. The Senate amendment further states that the purpose of a health assessment is to aid in determining whether additional health studies and medical evaluations need be undertaken.

Under the Senate amendment, the Administrator of ATSDR is required, upon completion of a health assessment, to provide the Administrator of EPA and the State concerned with the results of the assessment, together with any recommendations for further action which may be necessary at the facility.

The Senate amendment provides that the costs of performing a health assessment may be recovered as a cost of response under section 107 of this Act, where the assessment discloses exposure of a population to a relase of hazardous substances.

The Senate amendment further directs the Administrator of ATSDR to undertake pilot health effects studies and/or full-scale epidemiological studies where, in the judgment of the Administrator of ATSDR, such studies are appropriate based on the results of the health assessment or other study. In cases where a health assessment indicates a potential significant risk to human health, the Senate amendment also requires the Administrator of ATSDR to consider whether establishing a registry of exposed persons would be useful, taking into account such factors as the seriousness of identified diseases or the likelihood of population migration from the affected area.

The Senate amendment requires the Administrator of ATSDR to undertake a study and report to Congress on the usefulness of establishing a health surveillance program.

In the event that a health assessment or other study conducted under section 104(i) identifies a significant health risk to individuals exposed to hazardous substances, the Senate amendment requires the President to take whatever steps may be necessary to reduce the exposure and eliminate or substantially reduce the risk. Such steps may include providing alternate household water supplies or relocating a population.

All studies and results of research performed under the authority of this subsection (other than health assessments) are required by the Senate amendment to be peer reviewed prior to being reported or adopted. In addition, the Senate amendment authorizes the Administrator of ATSDR to establish a program for the education of physicians and other health professionals on methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances. ATSDR is required to report to the Congress within 2 years after enactment on the implementation of the educational program.

House amendment—The House amendment repeals section 104(i) of current law, moving the health-related authorities already contained therein to a new section 116. The House amendment also adds several new health-related authorities and requirements in section 116.

The House amendment establishes the Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR is required to establish a list of areas closed to the public or otherwise restricted due to contamination by hazardous substances, and, together with EPA, to prepare a list of the most commonly found hazardous substances at Superfund sites. Within 6 months after enactment, ATSDR must list at least 100 such substances. Within 24 months after enactment, ATSDR must list an additional 100 substances, and in each of the following three years, must add at least 25 more substances to the list. ATSDR is then required to prepare toxicological profiles on all the listed substances, according to guidelines developed jointly with the Administrator of EPA. The House amendment notes specifically the type of information which such profiles must at a minimum contain.

Where adequate information is not available for any hazardous substance, ATSDR must assure the initation of a research program designed to determine the health effects of such substance(s). This research program is to be coordinated between EPA and ATSDR, and may be carried out using programs already established under TSCA and FIFRA.

The House amendment requires that ATSDR perform a health assessment for each facility on the National Priorities List (NPL) which meets specified criteria. In addition, a process whereby individuals may petition ATSDR to perform a health assessment is established. Petitions must include evidence adequate to demonstrate that there has been some exposure to a hazardous substance. Within 45 days after receipt of such a petition, ATSDR must exercise one of several options, including initiating a health assessment, issuing a determination that an assessment is not necessary, or requesting more information.

The House amendment defines "health assessment" as a determination of the potential individual and population health risks posed by a facility, and sets out certain factors upon which such a determination should be based, such as the nature and extent of the contamination, potential pathways of human exposure, and the size and potential susceptibility of the affected community. Where a health assessment identifies a significant excess of disease in a population, the assessment must include, to the maximum extent practicable, an assessment of attributable risk. The purpose of a health assessment is to aid in deciding what further actions, taken either by ATSDR under the authority of this section or by EPA under its authorities under this Act, are necessary.

The House amendment further requires that, upon completion of a health assessment, ATSDR must provide the Administrator of EPA and each affected State with the results of the assessment, including recommendations concerning the need to further reduce exposure to hazardous substances.

Under the House amendment, the costs of performing a health assessment may be recovered as a cost of response under the authority of section 107 of this Act, where the assessment discloses exposure of a population to a release of a hazardous substance from a facility.

The House amendment then directs the Administrator of ATSDR to perform pilot health effects studies or full-scale epidemiological studies where, in the judgment of the Administrator of ATSDR, such studies are appropriate based on the results of a health assessment of other study.

In any case where a health assessment or epidemiological study indicates a potential or observed significant risk to human health, the House amendment directs the Administrator of ATSDR to establish a registry of persons exposed to hazardous substances if, after evaluation, the Administrator of ATSDR determines that the registry could benefit its participants by prevention or early detection of serious adverse health effects, or by providing information not currently available on the human health effects of such exposure.

The House amendment further requires the ATSDR Administrator to establish a health surveillance program where the ATSDR Administrator has determined, based on a health assessment, epidemiological study, or exposure registry, that there exists a significant increased risk of adverse health effects in humans. The health surveillance program must include at a minimum periodic medical testing where appropriate and a mechanism to refer for treatment those individuals who test positive for diseases.

In addition, where a health assessment or other study identifies a significant risk to human health from exposure to hazardous substances, the House amendment requires the Administrator of EPA to take whatever steps may be necessary to abate the risk. Such steps may include providing alternate household water supplies or relocating the population. In cases of public health emergencies believed to be caused by exposure to hazardous substances, the House amendment directs the Administrator of ATSDR to arrange for medical care and testing to be provided to exposed individuals, and to offer assistance to any local and State health authorities providing such services.

All studies and results of research performed under the authority of this section (other than health assessments) are required by the House amendment to be peer reviewed prior to being reported or adopted. ATSDR is further required to assemble, develop where necessary, and distribute educational materials related to the human health effects of exposure to hazardous substances and methods of diagnosis and treatment of such health effects.

Finally, the House amendment makes it clear that the Administrator of ATSDR has the same authorities under this section with respect to facilities owned or operated by a department, agency or instrumentality of the United States as the Administrator of ATSDR has with respect to any nongovernmental entity.

Conference substitute—The conference substitute follows the format of the Senate amendment in amending section 104(i) of current law, rather than repealing section 104(i) and creating a new section.

Thus, there is no need to retain subsections 116 (a) and (b) of the House amendment, that establish the ATSDR, so these provisions were not included in the conference substitute, nor was section 116(c) of the House amendment, requiring the establishment of a list of restricted areas, because this requirement also exists in section 104(i) of current law.

The conference substitute adopts the House amendment requiring preparation of a list of substances found at Superfund sites for which toxicological profiles must be prepared, with one minor addition from the Senate provision. The conference substitute also adopts the House amendment requiring preparation of toxicological profiles, with two modifications. First, House section 116(e)(2)(C) regarding toxicological testing is deleted, and a new subparagraph (C) is inserted. New subparagraph (C) requires that, where appropriate, toxicological profiles shall contain an identification of toxicological testing needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans. Second, a new sentence has been added stating that any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing. It is within the discretion of the Administrator of ATSDR to determine what toxicological testing is relevant.

The conference substitute adopts the Senate amendment requiring establishment of a health effects research program, with the addition of one sentence from the House bill requiring the Administrator of ATSDR to consider recommendations of the Interagency Testing Committee established under the Toxic Substances Control Act prior to assuring the initiation of the health effects research program. The conference substitute also adopts the Senate amendment requiring coordination of the health effects research program with other such programs already established under TSCA and FIFRA. However, the conference substitute deletes the Senate provision which sets out the circumstances under which the costs associated with conducting the health effects research program may be recovered, and adopts instead new language requiring the Administrator of EPA to promulgate regulations to govern payment of such costs.

The conference substitute also adopts primarily the Senate amendment requiring the performance of health assessments, with minor and technical changes, except that the conference substitute does not include the phrase "release, threatened release, or" where it appears in the Senate language on performing health assessments at facilities listed on the NPL. This phrase is deleted since facilities listed on the NPL always include releases or threatened releases of hazardous substances.

The conference substitute adopts the Senate amendment authorizing the Administrator of ATSDR to perform health assessments upon receipt of petitions from individuals or licensed physicians to perform such assessments.

The conference substitute also adopts the Senate amendment stating the definition of a health assessment, with minor changes. The conference substitute adopts the House language stating the purpose of health assessments, and adopts a combination of the House and Senate provisions requiring the Administrator of ATSDR to report results and recommendations upon completion of a health assessment.

A recommendation made by the Administrator of ATSDR or a State or local health official under this section does not diminish the responsibility of the Administrator of EPA to select a response action which complies with other requirements of this Act or the National Contingency Plan.

The conference substitute deletes the authority for recovery of costs associated with the performance of health assessments in both the House and Senate amendments, since that authority is covered in the conference substitute's amendments to section 107 of current law.

The conference substitute adopts the House amendment setting out circumstances under which pilot health effects studies and full-scale epidemiological studies should be performed, with the addition of one additional requirement for a letter of transmittal to accompany such study upon completion where the study has identified a significant excess of disease in a population.

The conference substitute adopts the Senate amendment establishing a registry of exposed persons, and adopts the House amendment requiring the initiation of health surveillance programs. Thus, under the conference substitute, the Administrator of ATSDR is required to establish a health surveillance program where the Administrator of ATSDR determines, based on a health assessment, epidemiological study, or exposure registry, that there exists a significant increased risk of adverse health effects in humans. In such a circumstance, the term "significant" increased risk is defined to include increased risks to individuals or the entire exposed community. Such increased risks would be determined through review of the whole body of data available to ATSDR, including any environmental or biological sampling data, as well as all available toxicologic information. To be considered a significant increased risk for adverse health effects, the health effect must be a medically (or biologically) plausible effect from exposure to the substance(s) in question.

It is important to note that the term "significant" does not necessarily mean statistically significant. In scientific terminology, the phrase statistically significant commonly refers to results that have a confidence value of 95 percent or better. There may well be instances where a health assessment, epidemiologic study or toxicological testing will not have shown statistical significance at the 95 percent confidence level, but that a health surveillance program should be initiated because the adverse health effects are so serious, or the whole body of literature strongly suggests a correlation between exposure and adverse health effects.

The conference substitute adopts a combination of the House and Senate amendments requiring the Administrator of EPA to take certain steps (such as providing alternate household water supplies or relocating a population) to abate a significant risk from exposure to hazardous substances. The conference substitute deletes the House amendment setting out the duties of the Administrator of ATSDR during public health emergencies caused by exposure to hazardous substances, consistent with adopting the Senate approach of amending section 104(i) of current law, since this provision is already contained therein.

The conference substitute adopts the Senate amendment requiring peer review of studies and results of research conducted under this section, with the addition of one House provision setting a target for completion of the peer review. The conference substitute adopts the House amendment that requires ATSDR to develop, where necessary, and distribute educational materials, and adds authority not explicitly contained in the House amendment for ATSDR to provide direct educational services through short courses.

Finally, the conference substitute adopts the House amendment clarifying and confirming that ATSDR has the same authorities with respect to facilities owned or operated by the Federal Government as it has with respect to any nongovernmental entity.

SECTION 111—USES OF THE FUND

SUBSECTION (a)—AMOUNT OF FUND

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Subsection (a) of section 111 of the House amendment authorizes $1,830,000 for each of the five fiscal years, beginning after September 30, 1985. This amount is increased in any year by an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year involved.

Conference substitute—The conference substitute authorizes appropriations of $8.5 billion during a five-year period beginning on the date of enactment. This authorization also includes any funds that have been appropriated for the 1986 fiscal year pursuant to title II of Public Law 99-160.

SUBSECTION (b)—USES OF FUNDS SECTION 111(a)

Senate amendment—Section 138 of the Senate amendment authorizes the establishment of pilot programs for the removal or permanent treatment (e.g. decontamination) of lead-contaminated soil. These programs are to be conducted in one to three metropolitan areas where the threat to health due to lead contamination—particularly in children—has become acute. They are likely to be urban areas with older housing stock where an accumulation of lead exists in the soil surrounding residential dwellings or other structures with exterior, lead-based paint.

The pilot programs are designed to provide Federal and State governments with information that could serve as the basis for a future, more comprehensive response to hazardous concentrations of lead in the environment.

House amendment—Section 111(b) of the House amendment provides that the Fund may be used to make technical assistance grants under section 117(e) to groups of individuals that may be affected by releases from facilities on the National Priorities List.

Conference substitute—The conference substitute adopts both the House and Senate provisions. The Senate provision is broadened to include actions by the Administrator to remove, decontaminate or take other action with respect to soils that contain lead at the demonstration sites. The pilot projects are not limited as to time or expenditure amounts under section 104(c)(1), nor is cost-sharing from the State in which a site is located required.

SUBSECTION (c)—NATURAL RESOURCE DAMAGE CLAIMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(f) of the House amendment limits payments from the Fund for natural resource claims to those for which the claimant has exhausted all administrative and judicial remedies to recover from potentially liable parties. The exhaustion requirement does not apply to claims for the costs of natural resource damage assessments. Natural resource claims filed after December 1, 1985, may be paid only if damage assessments have been carried out in accordance with regulations issued by the Secretary of the Interior. Claims pending as of December 1, 1985, may be paid, but the total paid for all such claims may not exceed 50 percent of the total amount claimed, as determined by the Administrator.

Conference substitute.—The conference substitute adopts the House amendment with modifications. Payments for claims filed before December 1, 1985, are not restricted. The specific requirement that claims filed after December 1, 1985, be limited to assessments carried out in accordance with Interior Department regulations is deleted. Where, with reasonable diligence, jurisdiction in the Federal courts cannot be obtained over a responsible party likely to be solvent at the time of judgment, a claimant has exhausted all administrative and judicial remedies.

SUBSECTION (d)—SUBSECTION (c) AMENDMENTS

Senate amendment—The Senate amendment to subsection (c)(4) adds references to subsection (n) and section 104(i), relating to the ATSDR, and incorporates laboratory studies and health assessments.

House amendment—The House amendment modifies section 111(c) to provide that the term "health assessment" as used in paragraph (4) has the same meaning as section 116(f)(7).

Furthermore, section 111(d) of the House amendment adds the following purposes or activities for which the Fund may be used:

Petitions: Costs incurred by the Administrator in evaluating facilities pursuant to petitions submitted by any person who is or may be affected by a release or threatened release of a hazardous substance or pollutant or contaminant.

Oversight: The costs of (1) appropriate Federal and State oversight of remedial activities at National Priorities List sites resulting from consent orders or settlement agreements where the responsible party or parties have been determined, but inadequate oversight assistance has been provided by such party or parties, and (2) costs of contracts under section 104(a)(1).

Real Estate Acquisition: Costs incurred by the Administrator in acquiring real estate or interests in real estate under authority provided in the House amendment.

Research and Development: The costs of carrying out research, development, and demonstration of alternative and innovative treatment technologies, hazardous waste research, and research at university centers.

Local Emergency Measures: Reimbursements to local governments for temporary emergency measures and protection of drinking water supplies, with not to exceed 0.1 percent of the total amount appropriated from the Fund to be used for such purposes.

Worker Training: The cost of worker training and education grants to the extent that these costs do not exceed $10 million for each of the fiscal years 1986 through 1990.

Rewards: The costs of paying awards to individuals for information leading to arrest and conviction of any person subject to a criminal penalty under the Act.

Conference substitute—The conference substitute adopts the Senate amendment to subsection (c)(4) with modifications to provide that all costs under section 104(i) can be paid from the Fund. The conference substitute adopts the House amendment in section 111(d)(2) with the following modifications. The substitute (1) incorporates the term "arrangements" into section 111(c)(8) to parallel the provisions of section 104(a)(1) and drops the language relating to inadequate oversight assistance; (2) adopts a more general reference to section 311 in section 111(c)(10); and (3) adds a new paragraph (14) relating to the lead poisoning study authorized by section 118.

SUBSECTION (e)—LIMITATION ON CERTAIN CLAIMS

Senate amendment—Section 134(b) of the Senate amendment prohibits payments from the Fund for natural resource damages in any year for which the President determines that all of the fund is needed for response to threats to public health.

House amendment—Section 111(g) of the House amendment contains a technical amendment which provides that claims against the Fund shall not be valid or paid in excess of the total money in the Fund at any one time. The amendment limits the reference to claims to those for response costs "by any other person."

Conference substitute—The conference substitute adopts the Senate provision and deletes the House provision.

SUBSECTION (f)—WATER SUPPLIES BEYOND FEDERAL BOUNDARIES

Senate amendment—Section 140 of the Senate amendment amends section 111(e)(3) of the Act to provide that the Fund can be used to pay for alternative water supplies in cases involving federally-owned facilities, where groundwater contamination exists beyond the federal property boundary and the federally-owned facility is not the only potentially responsible party. This would include reimbursement of funds already spent by a municipality.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision.

SUBSECTION (g)—INSPECTOR GENERAL AUDITS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(h) of the House amendment replaces the provisions in current law concerning audits by Inspectors General of the agencies charged with responsibility for implementing the Superfund program. The new provision requires annual audits and submission of an annual report to the Congress summarizing the audit's findings. Each such report must include: (1) an audit of all payments, obligations, reimbursements or other uses of the Hazardous Substance Response Trust Fund to assure that the Fund is being properly administered; (2) a report on the status of all remedial and enforcement actions undertaken during the prior fiscal year; and (3) an estimate of the amount of resources, including the numbers of work years of personnel, which will be necessary for the relevant agencies to fulfill their statutory mandates.

Conference substitute—The conference substitute adopts the House amendment with modifications. The annual status report on remedial and enforcement actions and the resource estimate that were specifically assigned to the Inspector General by the House amendment is incorporated at a later point in the substitute as a general requirement for EPA's annual report. The Inspector General is to review these items in the EPA annual report. The Inspector General is also required to comply with the provisions of the Single Audit Act when conducting audits and reviews of Superfund payments and obligations.

SUBSECTION (h)—NEW SUBSECTIONS

Subsection (h) adds three new subsections to section 111 of CERCLA. Each subsection is described separately below:

SUBSECTION (h)(1)—AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

Senate amendment—The Senate amendment provides that in each fiscal year beginning in 1986 not less than 5 percent of the funds appropriated from the Fund would be directly available to the Agency for Toxic Substances and Disease Registry (ATSDR) to carry out the responsibilities assigned by ATSDR by the Act.

House amendment—Section 111(j) of the House amendment provides that for fiscal year 1986 and each fiscal year thereafter, not less than $30 million should be directly available from the Fund to the ATSDR for carrying out health effects research and public health assessment and protection activities.

Conference substitute—The conference substitute provides that not less than $50,000,000 in fiscal year 1987 and 1988, not less than $55,000,000 in 1988 and 1989 and not less than $60,000,000 in 1990 and 1991 shall be directly available to ATSDR to carry out activities under subsection (c)(4) and section 104(i).

SUBSECTION (h)(2)—LIMITATIONS ON RESEARCH AND DEVELOPMENT

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(k) of the House amendment establishes the following limitations on funding from the Fund for research and development programs:

No more than $20 million for each fiscal year 1986-90, for research, development and demonstration of innovative or alternative technologies under section 311(b);

For hazardous substance research, demonstration and training programs under section 311(a): 1986, $3 million; 1987, $10 million; 1988, $20 million; 1989, $30 million; and 1990, $35 million. No more than 10 percent of such amounts in each year may be used for training under section 311(a).

For each fiscal year 1986-90, no more than $5 million for university hazardous substance research centers under section 311(d).

Conference substitute—The conference substitute adopts the House amendment with modifications to years of authorization.

SUBSECTION (h)(3)—NOTIFICATION PROCEDURES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c) of the House amendment modifies section 111(a)(2) of CERCLA to authorize the Administrator to require "preauthorization" of claims against the Fund. Section 111(c) of the House amendment also contains amendments to section 112 of CERCLA. Those amendments are discussed in conjunction with section 112 of the conference substitute, below. Finally, section 111(l) of the House amendment proposes a new section 111(p), titled "Notification Procedures for Limitations on Certain Payments," which requires the Administrator to notify State and local officials and other concerned persons of the limitations on payment of claims from the Fund as soon as a site is listed on the National Priorities List.

Conference substitute—The conference substitute adopts only that portion of the House amendment relating to notifying State and local officials of the limitations on paying claims against the Fund when a site is listed on the National Priorities List. This amendment does not relate to the issue of preauthorization.

The conference substitute deletes the House amendment to section 111(a)(2) of CERCLA. The conferees agree that current law is adequate as it relates to payment of claims for necessary response costs incurred by any other person as a result of carrying out the National Contingency Plan and that no amendments to section 111(a)(2) are necessary.

OTHER MONETARY AUTHORIZATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(i) of the House amendment provides that there is authorized to be appropriated out of any money in the Treasury to the Hazardous Substance Superfund $250 million per year for fiscal years 1986 through 1990. This amount is available only to the extent that it exceeds amounts recovered on behalf of the Trust Fund for the prior fiscal year. In addition there is authorized to be appropriated to the Fund for each fiscal year an amount equal to so much of the aggregate amount authorized to be appropriated as has not been appropriated before the beginning of the fiscal year.

Conference substitute—The conference substitute authorizes to be appropriated $212.5 million per fiscal year for fiscal years 1987 through 1991.

SECTION 112—CLAIMS PROCEDURE

SUBSECTION (a)—CLAIMS AGAINST THE FUND FOR RESPONSE COSTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c)(2) of the House amendment amends section 112(a) of the Act, which contains a 60-day presentation requirement prior to the initiation of claims against the Fund, to specify that no claim against the Fund may be considered during the pendency of a civil action brought by the claimant to recover costs which are the subject of the claim.

Conference substitute—The conference substitute adopts section 111(c)(2) and (3) of the House amendment with the following modifications. First, the reference to section 111(a) in the new section 112(a) is corrected. Second, the proviso is modified to provide that no claim against the fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

Section 112(a) of current law contains a sixty-day presentation requirement relating to the initiation of claims against the Fund. Because of the absence of adequate guidance of the procedure for filing such claims, the failure of Federal or State natural resource trustees to comply with this requirement does not constitute a bar to the trustees from maintaining a claim against the Fund prior to December 11, 1983. The sixty-day presentation requirement has never applied to civil actions, nor is the selection of remedies authorized in section 112(a) irrevocable.

SUBSECTION (b)—PROCEDURES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 111(c)(3) of the House amendment proposes to raise the penalty for providing false information in a claim from $5,000 to $25,000 and strikes all of paragraphs (2), (3) and (4) of section 112(b), which contains settlement authorities and procedures for resolving disputed claims before a Board of Arbitrators. In lieu thereof, the House amendment proposes an administrative procedure by which claimants may challenge a decision of the President to reject all or part of a claim.

Conference substitute—The conference substitute adopts the House amendment to section 111(c)(3) with the following modifications. First, the modification to the penalty provision in section 112(b) is incorporated into section 109, pertaining to penalties. Finally, the conference substsitute provides that the amendments to section 112(a) shall not apply with respect to claims filed before the enactment of the subsection.

SUBSECTION (c)—STATUTE OF LIMITATIONS

Senate amendment—Section 142(b) of the Senate amendment adds a new section 113 to CERCLA which provides statute of limitations for both civil actions under the Act and claims against the Fund. This section of the conference report addresses claims against the Fund only; section 113 addresses, *inter alia*, statute of limitations for civil actions. The proposed section 113 specifies that no claim may be presented against the Fund for the costs of response unless the claim is presented within six years after the date of completion of the response action. Within the limitation period, a State or the United States may commence an action under this title for recovery of any costs at any time after such costs have been incurred. The Senate provision requires claims for natural resource damages to be initiated within six years after promulgation of regulation under section 301(c), or three years after the date of discovery of loss and its connection with the release in question, whichever is later.

House amendment—Section 112 of the House amendment proposes to amend section 112(d) of CERCLA to provide a six-year statute of limitations for claims for the recovery of costs referred to in section 107(a), running after the date of the completion of all response action. The provision also retains current law relating to the running of the statute of limitations against a minor or incompetent, as currently contained in section 112(c)(3). The House amendment does not contain a time limit for filing claims for natural resource damages.

Conference substitute—The conference substitute adopts the House amendment to section 112(d) of CERCLA with the following modification. The provision includes a new subsection (d)(2) relating to claims for the recovery of natural resources damages, which provides that no claim may be presented under this section for the recovery of damages referred to in section 107(a) unless the claim is presented within three years after the date of discovery of the loss and its connection with the release in question, or the date on which final regulations are promulgated under section 301(c), whichever is later.

SUBSECTION (d)—DOUBLE RECOVERY

Senate amendment—The Senate amendment contains no provision relating to this subject.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute provides for a new section (f) to section 112 providing that where the President has paid out of the Fund any response costs or any costs specified under section 111(c)(1) or (2), no other claim may be paid out of the Fund for the same costs. This amendment to section 112, as well as the amendment to section 107(f), assures that there is no double recovery for natural resources damages, including the costs of damages assessment, restoration, rehabilitation, or acquisition in the case of injury to natural resources. These amendments are not intended to prohibit different claims or actions for different damages stemming from the same injury to the same natural resource. Nor are the amendments intended to affect the abilities of trustees to initiate or participate as co-claimants or co-plaintiffs where otherwise authorized to do so.

SECTION 113—LITIGATION, JURISDICTION, AND VENUE

Senate amendment—The Senate amendment proposes a number of modifications to CERCLA. First, it adds a new section 113(e) to CERCLA to clarify and confirm that nationwide service of process is available for suits instituted under CERCLA.

The Senate amendment adds a new section to CERCLA to clarify and confirm that parties found liable under sections 104, 106, and 107 of CERCLA have a right of contribution which would allow them to sue other liable or potentially liable persons. The provision also explicitly provides that parties who reach a judicially approved good faith settlement with the government are not liable for the contribution claims of other liable parties.

As to claims and actions for natural resources damages, the Senate amendment requires that claims be presented or actions commenced within three years after the discovery of the loss and its connection with the release in question or the date of enactment of this Act or within six years after the date on which final natural resource damage regulations are promulgated, whichever is later.

For response costs, the Senate amendment requires that claims be presented or actions commenced within six years after the date of completion of the response action.

The Senate amendment contains a provision which explicitly preserves the rights of minors or incompetents to file actions until such time as they become legally competent.

The Senate amendment, set forth in proposed new 113(f), provides for judicial review of the response under only three circumstances:

(1) cost-recovery actions under section 107;
(2) suits for abatement under section 106(a); or,
(3) Suits to recover penalties under section 106(b).

Judicial review is based on an administrative record developed by the President with full opportunity for potentially responsible parties and other citizens to provide comment.

Under the Senate amendment, the burden of proof is on the party challenging the response to establish that the response "was not reasonably justified under the criteria set forth in the NCP, including the cost effectiveness of such action, or that the decision was not otherwise in accordance with law." If a challenging party prevails under this standard of review it nevertheless remains accountable for the cost of that portion of the response that was reasonably justified.

Finally, the Senate amendment contains provisions on reimbursement, expedited judicial review of permitting, and selection of the circuit court of venue for actions under CERCLA.

House amendment—The House amendment contains many of the same elements as the Senate amendment. All of its provisions are added to existing section 113 of CERCLA.

The House amendment establishes a new section 113(e) regarding nationwide service of process. It also establishes a new section 113(f) for authority by settling parties to seek contribution from non-settlors. This section protects settling parties from actions for contribution by others whether the settlement is incorporated in a consent decree or an administrative order.

For natural resource damages, the House amendment in new section 113(g) of CERCLA requires that a civil action be commenced within three years after the date of the discovery of the loss or of the promulgation of natural resource damage regulations, whichever is later. It also sets forth new statutes of limitations for civil actions for the recovery of response costs.

The House amendment, set forth in new section 113(h) of CERCLA, establishes the identical three circumstances under which judicial review of the remedy is available as does the Senate amendment. In addition, it explicitly provides for five additional circumstances in which judicial review can be obtained prior to implementation of the response action.

The House amendment also contains provisions regarding intervention, judicial review and the standard thereof, the administrative record and contents thereof, and reimbursement.

Conference substitute—The conference substitute adopts the language of the House amendment with clarifications and modifications. It also incorporates specific provisions from the Senate amendment.

The conference substitute adopts the language related to nationwide service of process that was contained in the House amendment. This provision, designated new section 113(e) of CERCLA, clarifies and confirms that nationwide service of process is available for suits instituted by the United States under CERCLA. Nothing in this section diminishes any right of any other person to secure nationwide service of process under any other authority.

The conference substitute adopts new section 113(f) as contained in the House amendments, and thus provides contribution protection for those who enter into administrative settlement agreements with the government, as well as those who enter into consent decrees for settlements. In addition, the substitute makes technical and clarifying changes to this section. Finally, the substitute deletes the reference to the circumstances under which settlements can be set aside under new section 113(f)(2). This issue is now covered in new section 122(m) which deals directly with settlements.

With respect to civil actions for natural resource damages, the conference substitute adopts new section 113(g) of CERCLA as set forth in the House amendment, with clarifications and modifications. One modification, based on the Senate amendment, requires that a civil action be commenced within three years after the later of (1) the date of the discovery of the loss and its connection with the release in question or (2) the date on which final natural resource damage regulations are promulgated. This section further requires that civil actions for damages to natural resources generally be delayed until completion of the RI/FS at NPL sites and at certain other sites where the President is diligently proceeding with the RI/FS. The phrase "the President is diligently proceeding with a remedial investigation and feasibility study" includes cases where a potentially responsible party is performing an RI/FS under supervision of the President.

The Conferees have adopted these amendments relating to the time limits for initiating actions for natural resource damages because the ability for Federal and State trustees to pursue such claims and actions has been impaired by the failure of the President to promulgate regulations govering procedures for filing claims and assessing damages to natural resources. These amendments are intended to revive causes of action for natural resource damages that may have been foreclosed by the running of the statute of limitations relating to such actions under current law. A corresponding set of amendments in section 112 pertaining to the time limits for filing claims against the fund for natural resource damages is also intended to revive claims that may have been foreclosed.

As to the statute of limitations for civil actions for the recovery of response costs, the conference substitute adopts new section 113(g)(2) of CERCLA from the House amendment, with clarifying changes. This provision distinguishes between remedial actions and removal actions. The conference substitute also provides, as did the House amendment, for the entry of a declaratory judgment, which is to have a binding effect in future claims for future response costs as to the vessel or facility in question. This is consistent with the overall structure of CERCLA, which contemplates that the President may bring a series of claims for response costs under section 107, injunctive relief under section 106, or actions for access under section 104 with regard to a particular site or facility. If the President brings an earlier action for such claims, he is not barred in a subsequent action from bringing other claims. The doctrine of collateral estoppel remains applicable in these actions.

The conference substitute also adopts section 113(g)(3) of the House amendment, which prohibits the commencement of any action for contribution more than three years after the date of judgment in any civil action under this Act for recovery of costs or damages or more than three years after the date of entry of administrative or judicially approved settlements. Actions for indemnification incurred pursuant to new section 119 of CERCLA must be commenced within three years of the date upon which such indemnification is paid.

The conference substitute also expressly preserves, as did both the Senate and House amendments, the rights of minors and other incompetents until such time as they become legally competent or a guardian ad litum is appointed.

The conference substitute clarifies the language of new section 113(h) of CERCLA, which covers the timing of access to judicial review. It adopts the first three exceptions of both the Senate and House amendments, the fourth exception of the House amendment and, with clarifications, the fifth exception of the House amendment.

In new section 113(h)(4) of the substitute, the phrase "removal or remedial action taken" is not intended to preclude judicial review until the total response action is finished if the response action proceeds in distinct and separate stages. Rather an action under section 310 would lie following completion of each distinct and separable phase of the cleanup. For example, a surface cleanup could be challenged as violating the standards or requirements of the Act once all the activities set forth in the Record of Decision for the surface cleanup phase have been completed. This is contemplated even though other separate and distinct phases of the cleanup, such as subsurface cleanup, remain to be undertaken as part of the total response action. Similarly, if a response action is being conducted at a complex site with many areas of contamination, a challenge could lie to a completed excavation or incineration response in one area, as defined in a Record of Decision, while a pumping and treating response activity was being implemented at another area of the facility. It should be the practice of the President to set forth each separate and distinct phase of a response action in a separate Record of Decision document. Any challenge under this provision to a completed stage of a response action shall not interfere with those stages of the response action which have not been completed.

New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants, or contaminants.

In new section 113(i) of CERCLA, the conference substitute adopts a modified version of the Senate provision that expressly provides for a right of intervention in actions commenced under the Solid Waste Disposal Act or CERCLA.

The conference substitute adopts new section 113(j) of the House amendment, which limits judicial review of the selection of a response action to the administrative record on which the selection was based. The substitute clarifies the language of the House amendment to provide that the otherwise applicable principles of administrative law will govern as to whether supplemental material may be considered by the court. The applicable standard of review is that of the House amendment, namely "arbitrary and capricious or otherwise not in accordance with law."

The conference substitute adopts new section 113(k) of the House amendment to require the President to promulgate regulations for the establishment of an administrative record, which is to form the basis for the selection of a response action. Until the promulgation of regulations under new section 113(k), the record shall consist of those materials developed under current procedures for selection of a response action. The record for a response action selected prior to implementation of these regulations shall consist of the record developed prior to such implementation. General principles of administrative law respecting such records are not affected by this provision. The conference substitute expressly provides for participation by potentially responsible parties and other citizens in the development of this record, as well as its public availability. In addition, the President is required to make reasonable efforts to identify and notify potentially responsible parties before selection of a response action, but neither this requirement nor other provisions of the paragraph in which it is contained are to be a defense to liability.

The conference substitute sets forth the agreement on reimbursement as section 106 of the substitute.

The conference substitute incorporates the provision of the Senate amendment which requires that whenever a suit is brought under CERCLA, notice of such suit must be provided to the Attorney General of the United States and the Administrator.

The conference substitute deletes the Senate provision regarding expedited judicial review of permitting, which was included in the Senate bill as new section 113(i) of the Act. Litigation regarding permits required under applicable Federal laws for facilities that are designed to treat or dispose of hazardous wastes, particularly those from the cleanup of Superfund sites, should be given priority treatment by the courts.

The conference substitute deletes the Senate provision which would have amended existing section 113(a) of CERCLA to provide for the selection of the circuit court of venue for actions under the Act.

SECTION 114—RELATIONSHIP TO OTHER LAW

STATE FINANCING

Senate amendment—The Senate amendment strikes subsection 114(c) which addresses the right of States to impose taxes for purposes already covered by CERCLA.

House amendment—The House amendment amends subsection 114(c) of CERCLA to allow States to require contribution to a fund whose purpose is to pay for costs of response or damage.

Conference substitute—The conference substitute adopts the Senate approach. The substitute clarifies that States are not preempted from imposing taxes for purposes already covered by CERCLA.

USED OIL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes an amendment to the definition of "hazardous substance" to exclude used oil that is: listed as a hazardous waste under the Solid Waste Disposal Act; treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such oil; and, managed in compliance with standards promulgated by the Administrator, which shall include the authority for the Administrator to order corrective action necessary for any release of used oil.

Conference substitute—The conference substitute replaces the House amendment with a series of new provisions relating to used and recycled oil. The amendment to section 114 of CERCLA provides that service station dealers who (i) collect for recycling, used oil that is not mixed with other hazardous substances, and (ii) manage the recycled oil in compliance with yet-to-be-promulgated management standards under the Solid Waste Disposal Act (SWDA or RCRA) and other applicable authorities such as State or local recycling programs, will be exempted from Superfund liability for releases that might occur after they have relinquished control of the recycled oil. Liability under other laws, such as RCRA, is not affected.

"Service station dealer" is defined as any person who (1) owns or operates a filling station, garage, or similar retail establishment engaged in the business of selling, repairing, or servicing motor vehicles, (2) derives a significant percentage of the establishment's gross revenue from the fueling, repairing, or servicing of motor vehicles, and (3) accepts for collection, accumulation, and delivery to an oil recycling facility, oil that has been removed from a light duty motor vehicle, such as a passenger car, van, or small, personal-use pickup truck, or household applicance, such as a lawnmower, by the owner of the vehicle or appliance. All of these conditions must be met.

The fact that in some situations, such as in certain rural settings, no oil is presented by do-it-yourselfers for collection, accumulation, and delivery will not preclude a particular dealer from qualifying under this amendment. However, if such oil is presented, the dealer must, as a general matter, accept it to qualify for the special treatment afforded by this amendment. The requirement is that a service station dealer "accept . . . oil . . . that is presented . . .". To qualify, a dealer must be willing to accept oil from do-it-yourselfers. Conversely, a dealer who qualifies under this definition may, if he has reason to believe that a specific batch of oil has been mixed with other hazardous substances, refuse to accept that specific batch without sacrificing the coverage of this amendment.

To prevent the creation and use of "service station dealerships" as a front for hazardous waste management firms or commercial generators of hazardous substances that want the benefit of this exemption from liability, a significant percentage of the business' gross revenue must be derived from the fueling, repairing, or servicing of motor vehicles. Business operations, such as large retail establishments or car and truck dealerships that have a legitimate, commercial automotive service component, are intended to be covered by this definition. However, a retail establishment that does not derive revenue from fueling, repairing, or servicing motor vehicles does not qualify under this definition. To the extent establishments that do not qualify under this definition produce large quantities of used oil, they are industrial generators and are to be treated like other generators. The President is directed to further define in regulations what constitutes a "significant percentage."

Some government agencies, in an attempt to encourage do-it-yourselfers to recycle their oil rather than dispose of it improperly, have established collection facilities to accept delivery of small quantities of used oil from individuals. Such facilities that are established solely for this purpose will qualify as a "service station" under this amendment.

Also included in the definition of "service station dealer" are owners or operators of refuse collection services who are compelled by State law to collect, accumulate, and deliver do-it-yourselfer oil to oil recycling facilities. Such "dealers" are included in the definition only with respect to the small quantities of used oil collected from individual do-it-yourselfers. The special treatment afforded by this amendment does not extend to the collection of commercial or industrially produced used oil.

This amendment becomes effective on the effective date of EPA's RCRA used oil regulations. Such regulations must include a requirement that owners or operators conduct corrective action to respond to releases of recycled oil. The Agency shall, in conjunction with this rulemaking, provide notice to service station dealers all across the country of this amendment and explain what each dealer must do to qualify for the special treatment afforded by this amendment.

As noted above, the Agency is in the process of developing management standards and regulations for used oil under section 3014 of RCRA. The Agency is reportedly considering a regulatory approach that would regulate all used and recycled oil but would not list "recycled oil" as a hazardous waste. If such an approach is selected, RCRA provisions regarding criminal penalties and the authority for EPA to delegate responsibility for the regulatory program to the States will not, under the terms of RCRA, extend to recycled oil. To avoid such a result, the conference substitute includes in section 205 (relating to underground tanks) an amendment to make RCRA's criminal penalty provisions applicable to persons who improperly manage used oil that is regulated but not listed as a hazardous waste under RCRA. Similarly, EPA is given the authority to delegate such a regulatory program to the States. These amendments do not indicate a Congressional preference for any particular regulatory approach. They are included here to correct potential deficiencies in the RCRA regulatory program. These amendments are not intended to influence or prejudge the outcome of the ongoing regulatory process under RCRA.

While the pressures to recycle waste oil for energy conservation and economic purposes have eased recently, the pressures to safely manage such used oil and to prevent environmental pollution are ever growing. America's used oil recycling system handles approximately 57 percent of the more than one billion gallons of used oil generated each year. The balance of the used oil is disposed of improperly—into sewers, backyards, or into the trash which eventually winds up in municipal landfills.

The current used oil recycling system in this country depends, in large measure, on volunteers. These include small business owners, such as service station dealers, who perform a community service by collecting used oil from do-it-yourself oil changers and delivering such oil to recyclers. The volume of waste involved and the connection with the problem of properly managing household hazardous waste are just two examples of the factors that make the subject of this amendment unique.

Used oil, when properly recycled and managed, is a valuable resource. However, a number of factors, such as lower prices for virgin oil and fear of liability under Superfund or the Solid Waste Disposal Act, have recently resulted in a reduced demand by commercial users of recycled oil. To the extent such a reduction in demand disrupts the entire chain of commerce in recycled oil and leaves numerous households with no safe outlet for the oil from do-it-yourself automobile oil changes, the Federal government can and should, as a consumer, help to rectify this problem.

As set forth in section 6002(c)(2) of the Solid Waste Disposal Act, Federal agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel are required to use such capability to the maximum extent practicable. This includes recycled oil. The Administrator of EPA should work with these other agencies and, through the use of memoranda of understanding or other appropriate documents, assure that section 6002(c)(2) is being complied with, particularly with respect to the purchase and use of recycled oil.

This legislation includes an amendment to subtitle I of the Solid Waste Disposal Act which establishes a response program for leaks from underground storage tanks. Such tanks containing used oil which has not been mixed with other hazardous substances would generally fall within the meaning of petroleum tanks under the subtitle I response program. In responding to releases from such underground tanks containing used oil which has not been mixed with hazardous substances, the EPA should use the authorities of subtitle I rather than authorities under CERCLA or other corrective action authorities under Subtitle C of the Solid Waste Disposal Act. The presence of hazardous substances in used oil that result from the normal use of the oil (and not from mixing the oil with solvents or other hazardous substances) shall not be reason for EPA to disqualify a tank as eligible for response under the subtitle I response program. In most cases, releases from tanks containing used oil would not rise to the priority level necessary to be listed on the National Priorities List for CERCLA response. The subtitle I response program, financed from a separate source of revenue and designed for response to petroleum releases, is intended to assure a rapid and effective response to releases from underground storage tanks, including tanks which store used oil.

SECTION 115—DELEGATION; REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment authorizes the President and the Administrator of the EPA to delegate authorities in order to carry out the provisions of title I of CERCLA. The amendment also authorizes the Administrator of EPA to issue any regulations necessary to carry out the provisions of CERCLA.

Conference substitute—The conference substitute adopts no amendment to section 115 of CERCLA.

SECTION 116—SCHEDULES

Senate amendment—The Senate amendment contains no provision on schedules.

House amendment—Section 104(n) of the House amendment adds a new subsection 104(i) that establishes a mandatory schedule for response actions and other activities under CERCLA. The schedule contains target dates and objectives for completing remedial assessments, for listing facilities on the National Priorities List, for commencing remedial investigations and feasibility studies, for commencing remedial actions themselves, and for completing remedial actions at existing NPL facilities.

Conference substitute—The conference substitute provides for a new section 116 of CERCLA, titled "Schedules." Subsection (a) establishes as a goal of the Act that, to the maximum extent practicable, the President shall complete preliminary assessments of all facilities that are contained at the date of enactment in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). A preliminary assessment of those facilities is to include a statement as to whether a site inspection is necessary and by whom it should be carried out. The conference substitute also establishes as a goal of the Act that, not later than January 1, 1989, the President shall ensure the completion of site inspections at all facilities for which the President has stated a site inspection is necessary. Subsection (b) provides that within four years after enactment, each facility in CERCLIS shall be evaluated if the President determines that the evaluation is warranted on the basis of a site inspection or preliminary assessment. In a case of a facility listed in CERCLIS after enactment, the facility shall be evaluated within four years after the date of listing if the President determines that such evaluation is warranted on the basis of a site inspection or preliminary assessment. Based on information supplied by the Administrator of the Environmental Protection Agency, it is expected that the President will have added, or proposed to add, between 1,600 and 2,000 sites to the National Priorities List. To the maximum extent practicable, the President should undertake CERCLIS evaluations at an annual rate sufficient to achieve this goal by 1988.

Subsection (c) provides that, where any of the goals established by subsection (a) or (b) are not achieved, the President shall explain why such action was not completed by the specific date. Subsection (d) requires the President to assure that no fewer than 275 remedial investigations and feasibility studies are commenced for facilities listed on the NPL, in addition to those commenced prior to the date of enactment of this Act within 36 months after enactment. Where the President fails to meet the 275 RI/FS target, no fewer than an additional 175 RI/FSs shall be comenced within four years after enactment; an additional 200 RI/FSs within five years after enactment; and a total of 650 RI/FS within five years after enactment.

Subsection (e) requires the President to assure that substantial and continuous physical on-site remedial action commences at facilites on the NPL, in addition to those facilities on which remedial actions has commenced prior to the date of enactment of these amendments, according to the following schedule: 175 facilities during the first 36 months after enactment; and 200 additional facilities during the following 24 months.

SECTION 117— PUBLIC PARTICIPATION

Senate amendment—The Senate amendment requires that, before the United States or a State selects a remedial action or enters into a convenant not to sue or to forbear from suit or otherwise settle or dispose of a claim under the Act, several procedures must be followed to allow the public to participate prior to final selection or entry. The public must be given notice of such proposed action, opportunity for a public meeting in the affected area, and a reasonable opportunity to comment. Notice must be accompanied by a discussion and analysis sufficient to provide a reasonable explanation of the proposals considered.

The Senate provision also amends section 111(c) of CERCLA to include the costs of technical assistance grants under the purposes for which the President is authorized to use the money in the Fund. Payment of such costs is subject to amounts as are provided in appropriations acts and shall be in accordance with rules promulgated by the President. Such grants may be made to those potentially affected by a release or threatened release at any facility listed on the National Priorities List, and may not exceed $75,000 per grant. These grants may be used to obtain technical assistance in interpreting information about the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at a facility.

House amendment—The House amendment requires either the Administrator or State, as appropriate, to take steps before adopting any remedial action plan. The first step is publishing a notice and brief analysis of the plan and making the plan available to the public. This notice and analysis must include sufficient information necessary to provide a reasonable explanation of the proposed plan. The second step is providing reasonable opportunity for submission of written and oral comments, and an opportunity for a public meeting at or near the facility in question, about the proposed plan and any waivers of requirements granted under section 121 of the House amendments relating to cleanup standards. The Administrator is required to keep a transcript of such a meeting and to make this transcript available to the public.

House amendment also requires that notice of the final remedial action plan be published and that the plan be made available to the public before commencing any remedial action. This final plan must be accompanied by a discussion of any significant changes in the proposed plan, and the reasons for such changes, as well as a response to each of the significant comments, criticisms, and new data submitted in oral or written presentations in accordance with the requirements described above.

After adoption of a final remedial action plan, if any remedial action is taken, if any section 106 enforcement action is taken, or if any settlement or consent decree under section 106 is entered into, and if such action, settlement or decree differs in any significant respects from the final plan, the Administrator is required to publish an explanation of the significant differences and the reasons such changes were made.

The term "publication" includes, at a minimum, publication in a major local newspaper of general circulation. In addition, the House amendment requires that each item developed, received, published, or made available to the public pursuant to this amendment must be available for public inspection and copying at or near the facility in question.

The House amendment authorizes the Administrator, in accordance with rules promulgated by the Administrator, to make technical assistance grants available to any group of persons that may be affected by a release or threatened release at any facility listed on the National Priorities List. The purpose of these grants is to enable the group to obtain technical assistance to review and assess data and information that has been prepared by the Administrator and that is required to be published under the previously described requirements of this amendment.

These grants may not exceed $25,000 for a single recipient, unless the Administrator waives this limit. The Administrator may waive this dollar limit in any case where such a waiver is necessary to carry out the purposes of this subsection on grants.

Conference substitute—The conference substitute adopts the House amendment's provisions on public participation, with some modifications. One such modification is the explicit statement that a State or the President is required to keep a transcript of the public meeting pursuant to section 117(a)(2) and to publish the explanation of significant differences between the final plan and any remedial action, settlement, or decree as required by section 117(c). In the House amendment, only the Administrator was explicitly made subject to these requirements.

The conference substitute adopts a combination of the House and Senate provisions establishing a technical assistance grants program for use at National Priorities List sites. This program is to be a regular part of the Superfund program, and the President shall not refuse to fund the technical assistance grants program, or any specific application for a grant, on the ground that there has been no specific line item appropriation. The conference substitute adopts the Senate amendment's statement that the grants may be used for technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection, and construction of remedial action, operation and maintenance, or removal action at such facility. Such grants are not intended to be used to underwrite legal actions. However, any information developed through grant assistance may be used in any legal action affecting the facility, including any legal action in a court of law.

The conference substitute states that the grant amount may not exceed $50,000 for a single grant recipient. As in the House amendment, however, the President may waive this dollar limitation. The conference substitute states that as a condition of the grant, each recipient must contribute at least 20 percent of the total costs of technical assistance for which the grant is made. This condition may be waived by the President if the grant recipient demonstrates financial need and that the waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

The conference substitute states that not more than one grant under section 117(e) may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action. A recipient therefore is eligible for multiple grant awards and can seek additional grants at each stage of activity for which grants may be made, including, but not limited to, such stages as remedial investigation and feasibility study, remedial design, or other appropriate stages.

SECTION 118—MISCELLANEOUS PROVISIONS

HIGH PRIORITY FOR DRINKING WATER SUPPLIES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment adds a new section 118 to CERCLA that would require the Administrator to give high priority to facilities where the release has resulted in the closing of drinking water wells or has contaminated a sole or principal drinking water source designated under the Safe Drinking Water Act.

Conference substitute—The conference substitute adopts the House amendment with a minor modification. The phrase "a sole or principal drinking water source under the Safe Drinking Water Act" has been replaced with the phrase "a principal drinking water supply" in order that the EPA Administrator not be constrained in implementing this provision to existing interpretations of "sole or principal drinking water sources" under the Safe Drinking Water Act.

RADON-CONTAMINATED SOIL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision directing the EPA Administrator to make a $7.5 million grant from Superfund at a 100 percent Federal share to the State of New Jersey for the transportation and temporary storage of radon contaminated soil.

Conference substitute—The conference substitute adopts the House provision. The conferees intend that no action be taken beyond temporary storage of these materials without full and complete opportunity for public notice and comment, including concerned persons in nearby States. Action under this section is subject to sections 117 and 121.

UNCONSOLIDATED QUATERNARY AQUIFER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision prohibiting any person from locating a landfill over the Unconsolidated Quaternary Aquifer, or placing solid waste in a landfill over such aquifer.

Conference substitute—The conference substitute adopts the House provision.

SKILLED PERSONNEL STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House. amendment—The House amendment contains a provision directing the Comptroller General to conduct a study of the problem of shortages of skilled personnel in EPA to carry out response actions under CERCLA.

Conference substitute—The conference substitute adopts the House provision with minor modifications.

NONAPPLICABILITY OF STATE REQUIREMENTS

Senate amendment—The Senate amendment contains no comparable provison.

House amendment—The House amendment contains a provision limiting the applicability of State and local requirements to certain transfers.

Conference substitute—The conference substitute adopts the House provision with the clarification that the provision applies only to waste materials from the McColl Site in Fullerton, California.

LEAD POISONING STUDY

Senate amendment—Section 121 of the Senate amendment contains a provision directing the Administrator of the Agency for Toxic Substances and Disease Registry, in consultation with the EPA Administrator, to submit a report on the nature and extent of lead poisoning in children from environmental sources.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision with minor modifications.

FEDERALLY LICENSED DAMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 101 of the House amendment contains a provision which would effectively amend the definition of "Owner and operator" in CERCLA to exclude certain federally licensed dams.

Conference substitute—The conference substitute adopts the House provision with a clarification that the provision applies only to the Milltown Dam in the State of Montana.

COMMUNITY RELOCATION

Senate amendment—Section 105 of the Senate amendment contains a provision amending the CERCLA definition of the terms "remove" and "removal" to include certain costs with respect to community relocation.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision with minor modifications, including a limitation expressly restricting the applicability of the provision to any dioxin site in Missouri at which a decision as to temporary or permanent relocation has been made or is under active consideration as of the date of enactment of the Superfund Amendments and Reauthorization Act of 1986. These sites include: Quail Run, Minker Stout/Romaine Creek, Piazza, Castlewood and Times Beach.

LIMITED WAIVERS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 121 of the House amendment contains a provision authorizing a State, if certain conditions are met, to waive any permit requirements under subtitle C of the Solid Waste Disposal Act which would otherwise be applicable in the case of remedial actions specifically involving mobile incinerator units.

Conference substitute—The conference substitute adopts the House provision with several modifications, including (1) a requirement that the EPA Administrator approve the waiver, and (2) a limitation expressly restricting the applicability of the provision to the State of Illinois.

JOINT USE OF TRUCKS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 216 of the House amendment contains a provision requiring the EPA Administrator, in consultation with the Secretary of Transportation, to conduct a study on trucks used for transportation of both hazardous and non-hazardous materials.

Conference substitute—The conference substitute adopts the House provision.

RADON ASSESSMENT AND MITIGATION

(For a discussion of the provisions relating to radon assessment and mitigation, see the portion of the Statement of Managers relating to title IV of the bill.)

GULF COAST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision directing the EPA Administrator to establish a hazardous substance research, development, and demonstration center in Jefferson County, Texas, for the purpose of conducting research to aid in more effective hazardous substance response and management throughout the Gulf Coast. It is the intent and expectation of the

Conferees that the Center be located at Lamar University in Beaumont, Texas. Funds under section 311 of CERCLA may be used to carry out this provision. In order to carry out the purposes of this Center, the Center can make grants, accept contributions, and enter into agreements with universities located in Texas, Louisiana, Mississippi, Alabama, and Florida. In carrying out its responsibilities, the Center is not limited to working with universities; it may also negotiate arrangements with Federal and State agencies and industry.

RADON PROTECTION

Senate amendment—Section 156 of the Senate amendment contains a provision expressing the sense of Congress that the President, in selecting response actions for facilities on the NPL, may use innovative and alternative methods which protect human health and the environment.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adopts the Senate provision.

SPILL CONTROL TECHNOLOGY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision authorizing the Department of Energy's Office of Fossil Energy to develop, implement and manage a research and development program, and a testing and evaluation of response technologies program related to hazardous substance spills. These programs are to use the Liquefied Gaseous Fuels Spill Test Facility at the Frenchman Flat site.

The Conferees took this action after learning of the unique capabilities and the strong support the Department of Energy has for this site. At the same time, the Conferees are concerned that this user-sponsored facility may be vastly under-utilized when there are no formal industry commitments to use the facility.

Because the site has the potential to assist other hazardous substance related research, testing and evaluation activities, the Conferees believe that the Department of Energy's Office of Fossil Energy should, to the extent practicable, coordinate with the U.S. Environmental Protection Agency's Office of Emergency and Remedial Response and the Department of Transportation. In addition, the Department of Energy is directed to enter into contracts and grants with a non-profit organization in Albany County, Wyoming. It is the intent and expectation of the Conferees that the Department of Energy enter into grants and contracts with the Western Research Institute to provide the necessary technical and analytical support.

PACIFIC NORTHWEST HAZARDOUS SUBSTANCE RESEARCH, DEVELOPMENT, AND DEMONSTRATION CENTER

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision directing the EPA Administrator to establish a hazardous substance research, development, and demonstration center for the purpose of conducting research to aid in more effective hazardous substance response in the Pacific Northwest. It is the intent and expectation of the Conferees that the Center be located at the Battelle Memorial Institute Laboratories in Benton County, Washington, and Clallam County, Washington. In carrying out its responsibilities, the Center is not limited to working with universities; it may also negotiate arrangements with Federal and State agencies and industry. In addition, the EPA Administrator and the Secretary of Energy are authorized to enter into interagency agreements with one another for the purpose of providing research into alternative and innovative technologies to characterize and assess the nature and extent of hazardous waste (including radioactive mixed waste) contamination at the Hanford site in the State of Washington.

SILVER CREEK TAILINGS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute contains a provision which has the effect of removing the Silver Creek Tailing site in Utah from the list of sites recommended for inclusion on the NPL, unless the President determines, upon specific site data not used in the proposed listing of such site, that the site meets the requirements of the Hazard Ranking System or any revised Hazard Ranking System.

SECTION 119—RESPONSE-ACTION CONTRACTORS

Senate amendment—The Senate amendment contains two provisions directly related to the status of contractors who are engaged by Federal or State governments for the purpose of undertaking responses under CERCLA.

The first of these two provisions is section 104 of the Senate amendment, which proposes to amend the definition of "owner or operator" contained in section 101(20) of CERCLA. The definition would be modified to exclude response-action contractors from liability under CERCLA except to the extent that there is a release "primarily caused by the activities of such person."

The second provision is section 152 of the Senate amendments, which deals with the circumstances under which contractors would be indemnified for liability which might arise under State law or Federal laws other than CERCLA. Section 152 mandates indemnification against damages arising from the application of a strict liability standard and authorizes indemnification for damages arising based on a negligence standard.

The Second Senate amendment contains no provisions relating to contractor competition and does not preempt State law with respect to contractor liability.

House amendment—The House amendment contains provisions directly related to the liability and indemnification of response action contractors under both Federal and State laws, as well as one dealing with contractor competition. The term "response action contractor" as used in this section for both liability and indemnification purposes, covers any contractor who provides any "evaluation, planning, engineering, surveying and mapping, design, construction, equipment, or any ancillary services thereto for such facility".

Section 119 of the House amendment eliminates liability under any State or Federal law for damages resulting from the non-negligent actions of response action contractors. It also authorizes, in subsection (c), the indemnification of such contractors in the event they are held liable for negligence, provided certain enumerated requirements are met. Subsection (f), relating to competition among contractors, prohibits denial of the right to bid on response action contracts on the grounds of certain Federal requirements which might otherwise be applicable.

Conference substitute—The conference substitute adopts the House amendment with modifications.

The first modification to new subsection 119 provides that response action contractors shall not be liable except for their own negligence under CERCLA or any other Federal law for injuries, costs, damages, expenses, or other liability for any release or threatened release of a hazardous substance, pollutant or contaminant with respect to which it is a response action contractor. However, this section does not affect the liability of any person under any warranty under Federal, State, or common law.

For purposes of Federal law, and in recognition of the inability of contractors to obtain insurance in the current market as well as their essential role in responding to releases caused by others, the conference substitute provides a standard of liability based on negligence. Liability which might arise under non-Federal laws, however, is untouched by the conference substitute. The existing standard of liability for responsible parties under CERCLA is maintained. The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees urge States to take note of the Federal standards and review their own standards of liability.

The President, under specific circumstances and subject to requirements as set forth in the House amendment, may enter into indemnification agreements with response action contractors for liability due to negligence. Indemnification may not be provided, however, for liability arising out of the application of a standard of strict liability. The President shall not set limits and deductibles for indemnification under this provision so that they are at such unreasonable levels so as to make the indemnification agreement worthless.

The costs of indemnification are costs of response for purposes of CERCLA, and thus are costs recoverable under CERCLA. Under subsection 119(d) a responsible party may not be considered a response action contractor with respect to a release for which it is potentially liable under section 107. This constraint applies to both liability and indemnification. Also, responsible parties are barred from raising the third-party defense contained in section 107(b)(3) in cases where the release resulted from the acts or omissions of a response action contractor.

As a general rule, the President shall not participate directly in the defense of response action contractors in actions for claims subject to indemnification under this provision. However, the President retains the right to control the defense and settlement actions subject to indemnification agreements. In deciding whether to participate in such defenses, the President shall avoid any situation which places the executive branch in a conflict of interest in defending such suits.

The selection of response action contractors is subject to the generic requirements of otherwise applicable Federal selection procedures when such contracts are negotiated by Federal agencies.

SECTION 120—FEDERAL FACILITIES

Senate amendment—The Senate amendment reaffirms that except for any requirements relating to bonding, insurance, or financial responsibility, all provisions of CERCLA applicable to private facilities are applicable to Federal agencies in the same manner and to the same extent.

The Senate amendment requires the Administrator to establish a special Federal Agency Hazardous Waste Compliance Docket containing all information submitted under Section 3016 of the Solid Waste Disposal Act and notice of each subsequent action taken under this Act with respect to the facility. Periodic updates of the Docket are required every three months by publication in the Federal Register.

The Administrator must assure that a preliminary assessment is conducted for each facility on the Docket within eighteen months after enactment. Where appropriate, following the preliminary assessment, the Administrator must complete the evaluation and listing of such facilities on the National Priorities List within twenty months after date of enactment.

Within six months after inclusion on the National Priorities List, each agency is to enter into an agreement with the Administrator and appropriate State authorities under which the agency will carry out a remedial investigation and feasibility study for the facility no later than six months after completion of the RIFS. The Administrator is required to enter into an agreement with each agency providing a schedule for the expeditious cleanup of the facility. The Senate amendment provides that substantial continuous physical on-site remedial action must be commenced at such facility which is the subject to an agreement within twelve months after completion of remedial design.

The Senate amendment also provides that unless the Administrator has entered into a memorandum of understanding with the head of a Federal agency, the concurrence of the Administrator shall be required for the selection of appropriate remedial action and the administrative order authorities of Section 106(a) are delegated to the Administrator.

Each agency is required to complete cleanup as expeditiously as practicable after the date of the interagency agreement and to include in its annual budget submissions to the Congress a request for funding adequate to complete cleanup, and a review of alternative agency funding which could be used to provide the costs of cleanup.

The contents of each interagency agreement shall include a review of alternative remedial actions and selection of a remedial action plan by the Administrator, a schedule for completion, and arrangements for long-term operation and maintenance.

The Senate amendment requires that following approval of an agreement between the Administrator and another potentially responsible party to properly perform a remedial investigation and feasibility study or remedial action at the Federal facility within the prescribed deadlines, such agreement must be entered in the appropriate United States district court as a consent decree under Section 106 of this Act.

The Senate amendment explicitly provides for State and local participation in the planning, formulation and selection of the remedial action by the Administrator at Federal facilities.

The President may exempt any facility from compliance with guidelines, rules, regulations, or criteria if he determines it is in the paramount interest of the United States. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress has failed to make available the requested appropriation.

The Senate amendment provides the authority for the head of each agency to compromise or settle any claim or demand under this Act arising out of activities of his agency, where such settlement is $25,000 or less.

House amendment—The House amendment provides that each Federal agency is subject to and must comply with this Act. It also provides that, except for financial responsibility requirements, all guidelines, rules, regulations and criteria applicable to preliminary assessments, to evaluations pursuant to the National Contingency Plan, to inclusion on the National Priorities List, and to remedial actions at facilities where hazardous substances are located shall also be applicable to facilities which are owned or operated by the Federal government. State laws concerning removal or remedial actions are made explicitly applicable to response actions undertaken at facilities owned or operated by the Federal government which are not on the National Priorities List.

The Administrator must establish a special Federal Agency Hazardous Waste Compliance Docket for each department, agency, or instrumentality of the United States. The Docket is required to contain information submitted by each Federal agency under Section 103 of this Act, Sections 3005 or 3010 of the Solid Waste Disposal Act, and the inventory required by Section 3016 of that Act, including information on off-site contamination. Periodic updates of the Docket are required every six months by publication in the Federal Register.

The Administrator is required to evaluate each facility included in the Docket not later than January 31, 1987, where such evaluation is warranted on the basis of a site inspection or preliminary assessment. Any State Governor can obtain an evaluation of any facility included in the Docket. Facilities meeting the criteria for inclusion on the National Priorities List must be included within twelve months after evaluation.

For any facility listed on the National Priorities List, a remedial investigation and feasibility study must be commenced by the Federal agency, in consultation with the Administrator, within six months. Thereafter, within 180 days of completion of the RIFS, the head of the Federal agency must enter into an interagency agreement with the Administrator for expeditious completion of all necessary remedial action. Commencement of substantial continuous physical on-site remedial action is mandated at each facility not later than fifteen months after completion of the investigation and study.

The contents of each interagency agreement shall include a review of alternate remedial actions and selection of a remedial action plan by the Administrator, a schedule for completion, and arrangements for long-term operations and maintenance.

The Administrator is required to publish regulations within eighteen months requiring notice of hazardous substance storage, release, or disposal activities on property transferred by the Federal government and deeds transferring real property owned by the United States must contain certain covenants and other information.

The House amendment affirms that the corrective action requirements of the Solid Waste Disposal Act apply to Federal facilities and nothing in this section affects the obligation of Federal agencies to comply with such requirements.

To protect the national security interests at a Department of Defense or Department of Energy facility, the President is authorized to grant an exemption from any requirement of certain titles of the Superfund Amendments and Reauthorization Act of 1986 which may not exceed one year per issuance. Notification must be provided to the Congress within thirty days of the President's issuance of an exemption order. Requirements of the Atomic Energy Act concerning the handling of restricted data and national security information are made applicable to the grant of access to classified information.

Certain Department of Energy facilities in the State of Missouri were provided a limited exemption from the requirements of Section 120 where a response action plan was under development.

Conference substitute—The conference substitute adopts provisions from both the House and Senate amendments.

The conference substitute adopts the House provision requiring the application of the Act to the Federal government with the modification that the subsection not apply to requirements pertaining to bonding, insurance, or financial responsibility.

This provision clarifies that all guidelines, rules, regulations and criteria promulgated pursuant to CERCLA must be complied with by all Federally-owned or operated facilities unless specifically exempted by this Act. Federal agencies must comply with all procedural and substantive provisions of the National Contingency Plan.

The conference substitute adopts the Senate amendment establishing the Federal Agency Hazardous Waste Compliance Docket modified by House language adding information submitted by each agency under Sections 3005 or 3010 of the Solid Waste Disposal Act and under Section 103 of this Act, as well as information on off-site contamination under Section 3016 of SWDA. Following notification under Section 103, where the EPA Administrator concurs that a response to source, special nuclear or by-product material (as defined by the Atomic Energy Act) is being conducted in accordance with the National Contingency Plan under other Federal statutues, docketing under subsection (c) is not required.

Periodic updates of the docket are required every six months as provided in the House amendment.

The conference substitute adopts the Senate amendment relating to assessment and evaluation modified to apply to the entire docket and substituting thirty months in lieu of twenty months as the time frame for completion of evaluation and listing. The provision requires placement of all qualifying Federal facilities on the National Priorities List no later than 30 months after the date of enactment. This deadline is intended to be an outside limit and to establish the latest date on which facilities can be listed. Federal agencies and departments, working in conjunction with EPA, should make every effort to propose and list facilities in installments as soon as possible during the 30-month period, as the facilities are evaluated under the Hazard Ranking System.

The conference substitute includes House language requiring the Administrator to conduct an evaluation of any facility included in the docket upon petition from the Governor of any State. The evaluation criteria for Federal facilities are to be applied in the same manner as for private facilities.

The conference substitute adopts the House provision, which mandates the commencement of a remedial investigation and feasibility study not later than six months after listing on the National Priorities List, modified to require consultation with appropriate State authorities. The conference substitute also adopts the House provision relating to commencement of remedial action requiring an interagency agreement within 180 days and mandates commencement of substantial continuous physical on-site remedial action at each facility not later than 15 months after completion of the remedial investigation and feasibility study. The Senate provision requiring completion of remedial action with conforming modifications is adopted.

The House and Senate provisions both contain language requiring that the contents of the interagency agreement include a review of alternative remedial actions and selection of a remedial action plan by the Administrator. This provision is modified by the conference substitute to provide for the joint selection of the remedial action by the head of a Federal agency and the Administrator, with the Administrator having the ultimate selection authority in case of disagreement.

Responsibility for selection of a remedial action is shared by the head of the relevant department, agency, or instrumentality and the Administrator. However, the Administrator has the additional responsibility to make an independent determination that the selected remedial action is consistent with the National Contingency Plan and is the most appropriate remedial action for the affected facility. The Administrator is required to select the remedial action where there is disagreement.

A site-specific Record of Decision (ROD) signed by the Administrator and the relevant Federal department or agency can be used to meet the requirements of this section regarding a site-specific interagency agreement (IAG) where such ROD incorporates a review of alternative remedial actions and selection of the remedial action, a schedule for completion of the remedial action, and provides for a long-term operation and maintenance of the facility. These elements of the ROD are identical to those required by subsection (e)(4), and such a ROD would serve as the interagency agreement.

The conference substitute adopts the Senate provision relating to State and local participation modified to clarify that Federal agencies are also subject to and must comply with the State participation requirements set forth in Section 121 (relating to cleanup standards). The conference substitute includes the Senate provision requiring settlements between the EPA Administrator and a private potentially responsible party for a Federal facility cleanup to be entered as a consent decree in the appropriate United States District Court. The inter-agency agreements between the Administrator of the Environmental Protection Agency and the heads of other Federal agencies are enforceable documents just as administrative orders under the Solid Waste Disposal Act and as such are subject to the citizen suit and penalties provisions of the Superfund Amendments and Reauthorization Act of 1986. Thus penalties can be assessed against Federal agencies for violating terms of agreements with the EPA Administrator.

This clarifies that CERCLA, together with RCRA, requires Federal facilities to comply with all Federal, State and local requirements, procedural and substantive, including fees and penalties, except as provided in section 121.

The House provision relating to property transferred by Federal agencies and obligations of Federal facilities under the Solid Waste Disposal Act is adopted by the conference substitute. In affirming the applicability of the corrective action requirements of the Solid Waste Disposal Act to Federal facilities, the conferees explicitly refer to the requirements of Section 3004(u) as set forth in the Environmental Protection Agency's recodification rule published on July 15, 1985, and the interpretation signed by the Administrator on February 11, 1986, and published in the Federal Register on March 5, 1986. Federal facilities are subject to corrective requirements to the same extent as any facility owned or operated by private parties and operate under the same property-wide definition of facility.

Further, the conference substitute adopts the House provision relating to site-specific national security exemptions conditioned by language in the Senate amendment relating to specific requests for appropriations by the President.

The national security waiver should be applied only on a site-specific and instance-specific basis, and with appropriate restraint. The waiver is intended to protect the legitimate national security interests of the United States. The waiver was included—as it has been in other major Federal environmental laws—because the Departments of Defense and Energy expressed concern that operation of their facilities, vital to national security, could be seriously interfered with, particularly in time of war and other national emergencies. The national security waiver is not intended to routinely exempt response actions at Federal facilities from the public health and environmental standards imposed under the Act. Furthermore, the duration of the national security waiver is not intended to continue beyond the time required to protect legitimate national security interests. Such response actions should be conducted in an expeditious and sound manner that provides protection of human health and the environment.

The conference substitute deletes the Senate provisions relating to Federal agency settlements and memorandums of understanding between the Administrator and the head of a Federal agency with regard to selection of remedial actions.

The conference substitute retains the limited grandfather provision in the House amendment for certain Department of Energy facilities, but the requirements of this Act, including Sections 120 and 121, apply to all Federally-owned or operated facilities, including those facilities for which a response action, remedial action plan or other type of cleanup plan, in whole or part, is currently under development.

All provisions of the Act relating to Federal facilities, including the terms of interagency agreements and records of decisions, are subject to the citizens suits provision.

The Administrator shall take into account the special ecological and environmental missions of certain Federal land managers, such as the Fish and Wildlife Service, when fulfilling the requirements of this section. The Administrator shall consider closely the plans for remedial actions recommended by these Federal officials to ensure that repsonse actions undertaken pursuant to this Act are compatible with the ecological and environmental responsibilities of these other Federal agencies.

The costs and expenses of the Administrator of the Environmental Protection Agency in overseeing the response activities at Federal facilities are reasonably necessary for and incidental to the implementation of this Act and are payable under Section 111.

SECTION 121—CLEANUP STANDARDS

Senate amendment—The Senate bill amends section 104(c)(4) of CERCLA to require that the President must select remedial actions that, to the extent practicable, are in accordance with the NCP and that provide for cost-effective response, taking into account the total short- and long-term costs including operation and maintenance. Remedial actions under sections 104 or 106 must attain a degree of cleanup of hazardous substances, pollutants and contaminants from the environment and control of further release at a minimum that assures protection of human health and the environment. Remedial actions must be relevant and appropriate under the circumstances presented. Remedial actions involving permanent treatment are preferred over those not involving treatment, and off-site transport and disposal without treatment is the least favored alternative. No RCRA or Clean Water Act permit is required for the portion of any response action conducted entirely onsite, if done in compliance with this paragraph. The Fund-balancing provision of section 104(c)(4) is continued in new subparagraph (E). Under sections 114(a) and 302(d) of CERCLA, more stringent State standards and permit requirements apply to facilities that are the subject of remedial actions selected under these provisions.

House amendment—The House amendment adds a new section 121 to CERCLA governing the selection of remedial actions under sections 104 and 106. Under this new section, remedial actions must be cost-effective, in accordance with the NCP, and require that level or standard of control of each hazardous substance or pollutant or contaminant at the facility that is necessary to protect human health and the environment. The Administrator must, to the maximum extent practicable, select permanent solutions, and if such a permanent solution is not feasible, the facility must be placed in a separate category of the NPL and reviewed no less frequently than every 5 years to determine if a permanent solution has become available and whether the existing remedy continues to protect human health and the environment. If permanent solutions are not feasible for particular sites, the Administrator is to consider containment in above-ground engineered structures. The Administrator is required to assess the long-term effectiveness of various alternatives, including permanent solutions, taking into account specified factors, and remedial actions involving treatment are preferred.

For hazardous substances, pollutants and contaminants which remain on-site, the House amendment requires that remedial actions must require a level or standard of control which is at least equivalent to a legally applicable or relevant and appropriate standard under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, or the Solid Waste Disposal Act or water quality criteria under the Clean Water Act. The Administrator is also required to consider any tolerance level established under the Federal Food, Drug, and Cosmetic Act. More stringent State standards also must be met, in accordance with a specified procedure. Remedial action involving containment must comply with the standards applicable to facilities required to obtain permits under subtitle C of the Solid Waste Disposal Act.

Material transferred off-site must be transferred to a facility operating in physical compliance with a RCRA or TSCA permit, to be placed in a unit that is not releasing any hazardous waste or constituent thereof into groundwater or surface water, and where any releases at other units at the facility are being controlled by a corrective action program approved by the Administrator.

The House amendment authorizes the Administrator to waive requirements under other Federal and State laws applicable to remedial actions under section 121(g), in specified cases: an alternative remedial action will provide protection of human health and the environment substantially equivalent to the remedial action necessary to comply with such requirements; compliance with such requirements will result in greater risk to human health and the environment than alternative options; compliance with such requirements is technically impracticable from an engineering perspective; compliance will consume a disportionate share of the Fund (the Fund-balancing test of current law); or compliance will cost private parties substantially more than the Fund would pay if the Fund-balancing test were applied. Waivers cannot result in the violation of the Clean Water Act, the Marine Protection, Researcn, and Sanctuaries Act, the Clean Air Act, or the Safe Drinking Water Act.

On-site remedial actions do not require permits other than under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and State groundwater laws. Removal actions under emergency circumstances do not require permits.

The House amendment sets out a detailed procedure through which State permit requirements and State substantive standards will apply to remedial actions selected under this Act. Separate provisions deal with State concurrence or nonconcurrence at Fund-financed sites, Federal facilities, and sites involving action under section 106.

New section 121(k), added by the House amendment, requires remedial action involving treatment of dioxins or dibenzofurans to meet specified requirements. New subsection (1) requires the Administrator to use value engineering review in evaluating the cost effectiveness of a response action projected to cost more than $4,000,000. New subsection (m) authorizes a State to waive the permit requirements of RCRA for mobile incinerator units involved in onsite remedial actions.

Conference substitute—The conference substitute adds a new section 121 governing the selection of remedial actions under sections 104 and 106. Under this new section, remedial actions must assure protection of human health and the environment, and must be in accordance with this new section, in accordance with the NCP, to the extent practicable, and cost effective taking into account the short- and long-term costs including operation and maintenance.

The provision that actions under both sections 104 and 106 must be cost-effective is a recognition of EPA's existing policy as embodied in the National Contingency Plan. The term "cost-effective" means that in determining the appropriate level of cleanup the President first determines the appropriate level of environmental and health protection to be achieved and then selects a cost-efficient means of achieving that goal. Only after the President determines, by the selection of applicable or relevant and appropriate requirements, that adequate protection of human health and the environment will be achieved, is it appropriate to consider cost effectiveness.

Remedial actions involving permanent treatment are preferred over those not involving such treatment, and off-site transport and disposal without such treatment is the least favored alternative. The President must assess the long-term effectiveness of various alternatives, including permanent solutions and alternative treatment technologies, taking into account specified factors, and must select remedial actions that utilize permanent solutions and alternative treatment technologies to the maximum extent practicable. If the President does not select such a remedial action, the President must publish an explanation. The President may select a remedial action involving a permanent solution or alternative treatment technology whether or not such an action has been achieved in practice at any similar site.

Under new section 121(c), the President must review any facility at which any hazardous substance remains after a remedial action, no less often than every 5 years. If upon such review it is the judgment of the President that action is appropriate at the facility under such section 104 or 106, the President must take such action or require a responsible party to take such action. The President is required to report to the Congress on what facilities require such review and the results of such review.

New section 121(d) establishes the substantive standards that remedial actions under sections 104 and 106 must meet. The general standard is that remedial actions must attain a degree of cleanup of hazardous substances, pollutants and contaminants released into the environment and of control of further release at a minimum that assures protection of human health and the environment. For any material that will remain onsite, the remedial action must require a level or standard of control that at least attains any legally applicable or relevant and appropriate—

> standard, requirement, criteria, or limitation under any Federal environmental law, including (but not limited to) the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, or the Solid Waste Disposal Act;
>
> more stringent promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that has been identified to the President by the State in a timely manner.

A remedial action must require a level or standard of control that at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 303 or 304 of the Clean Water Act, where such goals or criteria are relevant and appropriate. In determining whether water quality criteria are relevant and appropriate, the President shall consider the designated or potential use of the surface or groundwater, the environmental media affected, the purposes for which the criteria were developed, and the latest information available.

The conference substitute restricts the use of any alternate concentration level process in the selection of remedial action. Under new section 121(d)(2)(B)(ii), an alternate concentration level process cannot be used to modify or establish legally applicable standards under this section (for example, a groundwater protection standard) if the process assumes a point of human exposure beyond the facility boundary. The only exception is in cases of a known or projected point of entry of groundwater to which such a standard would apply, into surface water which is a reasonable distance from the facility boundary. If at such points of entry, or at any point downstream where accumulations of constituents may occur, there will be no statistically significant increase of such constituents in the surface water from such groundwater, and there are enforceable measures that preclude human exposure at any point between the facility boundary and points of entry into surface water, an alternate concentration level process may assume such points of entry into surface water as the point of human exposure.

In developing projections that there will not be a statistically significant increase of constituents from such groundwater and surface water either at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream, there must be sufficient background data developed, in conjunction with the conduct of the remedial investigation/feasibility study, for both the point of entry and at any point where there is reason to believe accumlation of constituents may occur downstream, to allow a determination of whether the projected increase is greater than the 95 percent confidence limit for concentrations in surface water. In making such determinations for potential accumulations downstream, the President shall take into account the ability of the constituents to degrade, and areas along shorelines, areas of standing water, and biota where such constituents may be expected to settle out or accumulate. Measurements and projections shall not be based solely on annual averages, but the following shall also be considered as appropriate: seasonal surface water conditions; natural cycles and ambient conditions; flow, stream width, and stream depth; and the surface to groundwater relationship.

This section, sanctioning the use of an alternate concentration limit process that assumes points of exposure beyond the facility boundary, is limited to cleanup under CERCLA in which surface water is a reasonable distance from the facility boundary. This section does not address the use of alternate concentration limit processes under other environmental laws.

Under the new section 121(d)(2)(C), a State standard, requirement, criteria, or limitation that could effectively result in the statewide prohibition of land disposal of hazardous substances will not apply, if certain conditions exist. First, the President must comply with subsection (b). Second, even after compliance with subsection (b), the President must have proposed a remedial action that does not involve permanent treatment and for which the proposed disposition of waste from the remedial action is land disposal within such State. In that case, the State standard will apply if it is of general applicability and formally adopted, based on hydrologic, geologic, or other relevant considerations (and not adopted for the purpose of precluding onsite remedial actions or other land disposal for reasons unrelated to protection of human health and the environment), and the State arranges for, and assures payment of the incremental costs of using, an alternative facility for disposition of such materials. Clause (iv) requires the President to conform the remedial action at the Picillo Pig Farm site, Rhode Island, to the State standard.

While the requirements of subparagraph (C) create circumstances under which State requirements may be avoided, it does not establish a system of preemption. Nor does the subparagraph restrict the right of a State to undertake a clean-up or to recover the costs of the clean-up under State law or CERCLA. If a State chooses to undertake a response action pursuant to a State standard, requirement, criteria, or limitation that would not apply to a remedial action proposed by the President as a result of subparagraph (C), such action by the State shall not be interpreted or construed to be inconsistent with the National Contingency Plan for the purpose of section 107 of this Act solely as a result of the provisions of subparagraph (C).

Under new section 121(d)(3), material transferred offsite must be transferred to a facility operating in physical compliance with RCRA (or where applicable, TSCA or other Federal law) and applicable State requirements, including permitting requirements, to be placed in a unit that the President determines is not releasing any hazardous waste or constituent thereof into groundwater or surface water or soil. In addition, the section requires that any releases at other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of RCRA. The President must notify owners or operators of facilities of any determination under this paragraph.

The response and remedial actions taken by EPA under this program must be designed and carefully monitored to ensure that the proposed solutions to today's problems do not create new, perhaps more serious problems tomorrow. This is an especially important responsibility when the waste material is removed to a land disposal facility that, if improperly operated in violation of RCRA requirements, could contaminate groundwater or surface water and thereby present threats to human health and the environment.

The Managers expect that EPA shall initiate rulemaking within 180 days to implement the notice requirements of this provision. The Managers further expect that the owner or operator of a facility will be provided with an opportunity to meet informally prior to a final determination of eligibility except with regard to emergency removal actions. The Administrator is expected to establish post-determination procedures for resolving disputes related to determinations made under subparagraphs (A) and (B). In implementing this provison, the Agency should give appropriate consideration to the significance of the violations, including Class I violations, as compared with minor paperwork violations. Until the conclusion of such rulemaking, the Administrator shall implement these provisions on the basis of the statutory terms.

The addition of "soil" to the requirements of (d)(3)(A) is intended to preclude the transfer or disposal of hazardous wastes or constituents thereof into unlined units and lined units with releases other than de minimis releases into soil.

New section 121(d)(4) authorizes the President to select remedial actions that do not attain a legally applicable or relevant and appropriate standard, requirements, criteria, or limitation, as required by section 121(d)(2), in six circumstances—

> the remedial action selected is only part of a total remedial action that will comply when completed;

compliance would result in greater risk to human health or the environment than alternative options;

compliance is technically impracticable from an engineering perspective;

the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, through use of another method or approach;

with respect to a State standard, requirement, criteria, or limitation, the State has not consistently applied it to other remedial actions; or

in the case of a remedial action that is solely Fund-financed, the proposed remedial action is inappropriate under the Fund-balancing test of previous section 104(c)(4).

The President must make and publish findings of such circumstances, before selecting a remedial action not in compliance with section 121(d)(2).

The conference substitute does not include as a circumstance in which the President may select a remedial action that does not conform to a State requirement, anything comparable to section 121(j)(4)(A) of the House amendment. Any State standard that has been waived by a responsible State official pursuant to State law is not a legally applicable or relevant and appropriate standard within the meaning of this section.

With respect to the provision regarding inconsistent application of State standards, this provision will apply both where the standard is not of general applicability or where the standard has not been applied consistently by the State.

Subsection (d)(4)(D) allows the selection of a remedial action that does not comply with a particular Federal or State standard or requirement of environmental law, where an alternative provides the same level of control as that standard or requirement through an alternative means of control. This allows flexibility in the choice of technology but does not allow any lesser standard or any other basis (such as a risk-based calculation) for determining the required level of control. However, an alternative standard may be risk-based if the original standard was risk-based.

New section 121(e) provides that no Federal, State, or local permit may be required for response action conducted entirely onsite, where such response action is selected and carried out in compliance with section 121. States are given the authority to enforce requirements of consent decrees to which the remedial action must conform, in Federal district court. Consent decrees are to contain dispute resolution and enforcement provisions, and may include administrative enforcement. Consent decrees must contain stipulated penalties for violations of the decree of $25,000 per day, enforceable by the President or the State.

New section 121(f) sets out the way in which States will be involved in the selection of remedial actions. Paragraph (1) requires regulations governing State participation, including notice to the State of negotiations with potentially responsible parties and the opportunity to participate in those negotiations and be a party to any settlement. This latter requirement applies even in advance of the promulgation of such regulations.

New paragraph (2) provides that the President must give a State at least 30 days notice if the President proposes to select a remedial action under section 106 that does not attain a legally applicable or relevant and appropriate Federal or State standard, requirement, criteria, or limitation under the authority of section 121(d)(4). The State may concur in such selection and become a signatory to the consent decree. If the State does not concur, the State shall intervene in the section 106 action before entry of the consent decree. If the State establishes, on the administrative record (to which it is entitled to contribute), that the finding of the President under section 121(d)(4) was not supported by substantial evidence, the court shall order the remedial action conformed to such standard, requirement, criteria, or limitation. If the court does not so modify the remedial action, the State may assure payment of the incremental costs of meeting such standard, requirement, criteria, or limitation, and the remedial action (and consent decree embodying it) will be so modified anyway.

The provisions of section 121(f)(3) apply to the selection of remedial action at Federal facilities. The President must give a State at least 30 days notice if the President proposes to select a remedial action for a Federal facility that does not attain a legally applicable or relevant and appropriate Federal or State standard, requirement, criteria, or limitation under the authority of section 121(d)(4). If the State concurs in such selection, or fails to act within 30 days, the remedial action may proceed. If the State does not concur, the State may bring an action in Federal district court for the purpose of determining whether the finding of the President under section 121(d)(4) is supported by substantial evidence. If the State establishes, on the administrative record, that the finding is not supported by substantial evidence, the remedial action must be conformed to such standard, requirement, criteria, or limitation. If the court determines that the State has failed to establish that the finding was not supported by substantial evidence, and the State within 60 days pays the incremental costs of meeting such standard, requirement, criteria, or limitation, the remedial action will be conformed to the State's wishes. If the State fails to pay within 60 days, the remedial action shall proceed.

Nothing in new section 121(f)(3) precludes the Federal agency from taking remedial action unrelated to or not inconsistent with the disputed standard, requirement, critera, or limitation, or gives a court authority to enjoin such remedial action.

If the President determines that a permanent solution is not to be utilized, the President may consider remedial actions in which hazardous substances and pollutants and contaminants are securely contained in above-ground structures.

In addition, with respect to any remedial action which involves treatment of chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans, the President shall require, to the maximum extent practicable, treatment that provides each of the following:

(a) A destruction and removal efficiency meeting or exceeding 99.9999 percent.

(b) A treatment process which minimizes accidental emissions of chlorinated or halogenated dioxins, dibenzofurans, and other highly toxic materials to the environment.

(c) Protection against emissions of any hazardous substance or pollutant or contaminant into the air during normal operation and equivalent protection during nonsteady operations including start-up, shut-down, and power failures.

(d) Protection against secondary formation of halogenated dioxins and dibenzofurans.

This requirement does not apply if the President determines that (1) an alternative method of treatment or disposal attains a standard of performance that is equivalent, or (2) there will be no human exposure to the hazardous substance or pollutant or contaminant containing chlorinated or halogenated dioxins or chlorinated or halogenated dibenzofurans.

SECTION 122—SETTLEMENTS

Senate amendment—The Senate amendment authorizes the President to enter into settlement agreements with potentially responsible parties for the payment or conduct of remedial action. This provision also requires, with enumerated exceptions, the President to provide a non-binding preliminary allocation of responsiblity among all potentially responsible persons at a facility and authorizes the President to issue subpoenas for information needed to make allocations. If a responsible party or parties makes an offer to provide for payment or the undertaking of remedial action exceeding 50 percent of the total allocation and the offer was equal to or greater than the cumulative shares of the parties making the offer, a decision to reject such offer would be subject to judicial review. The provision authorizes the two mandatory covenants not to sue: for off-site transport in certain circumstances and for permanent treatment or destruction of hazardous substances. Finally, the provision authorizes settlements with *de minimis* contributors and provides for mixed funding.

House amendment—The House amendment confirms the authority of the Administrator of EPA to enter into settlement agreements with responsible parties regarding the clean-up of sites where hazardous substances have been or are threatened to be released. This provision also establishes a moratorium on action to clean up a site while negotiations are ongoing.

Additionally, the provision requires that settlements be incorporated in consent decrees which allow for public comment and judicial review, with a further authorization that settlements for performance of removal actions, for *de minimis* contributors, and for certain cost recovery under section 107 may be incorporated in administrative orders subject to a public comment period. The provision also authorizes the Administrator to grant covenants not to sue if such covenants are in the public interest. Finally, the provision authorizes the Administrator to reach early settlements with *de minimis* contributors and to agree to administrative settlements of cost recovery actions and authorizes mixed funding.

Conference substitute—The conference substitute adopts the House provision with several modifications. The substitute also incorporates specific elements of the Senate amendment.

As set forth in section 122(a) of the substitute, the decision of the President to undertake the settlement procedures set forth in this section is discretionary. Thus, the Conferees modified the language of section 122(a) to clarify this intent. The language used in this subsection is now identical to the language of section 122(g) which authorizes settlements with de minimis contributors. In both contexts, the decision to undertake the procedures set forth is in the discretion of the President.

Section 122(a) is also modified to state that the decision to use these procedures is not subject to judicial review. The purposes of the settlement procedures set forth in section 122 are to expedite settlements and to assure the effective clean-up of Superfund sites. Nothing in this section diminishes the responsibility of or precludes the court from reviewing the lodged consent decree to determine whether relevant requirements of the Act have been met and whether entry of the decree is in the public interest.

Section 122(b)(1), which addresses mixed funding for site response actions, provides that the President, where appropriate and in the public interest, may reimburse parties for certain costs of actions under the agreement by using monies from the Fund on behalf of parties who are unknown, insolvent, similarly unavailable, or refuse to settle.

In cases of mixed funding, the President is to undertake actions to impose the costs of the Fund obligations on non-settlors. Such actions may be to seek reimbursement for expenditures already made or to determine liability in advance of the actual incurrence of costs. But in any case, the burdens of mixed funding should be shifted to non-settlors, whether through reliance on the authorities of this Act or other laws, unless it would be unreasonable to undertake such efforts.

Section 122(b)(4), regarding future obligations of the Fund, reflects a compromise between the House and Senate provisions. It was adopted as an additional incentive for the President to select permanent remedies and thus avoid the circumstance where the failure of a remedy would result in additional Fund expenditures. It should also serve as a settlement incentive for private parties in mixed funding cases, but the conferees strongly emphasize that every effort should be made by the President to recover the obligation from non-settlors. In actual practice, this provision is intended as a restraint and limit on the President's use of mixed-funding authority.

The obligation of the Fund for future liability is limited to the extent that subsequent remedial actions are necessary by reason of the failure of the original remedial action. The parameters of Government future liability at a facility are to be defined by the provisions of the consent decree which define the remedial action involved. The obligation of the Fund for subsequent remedial action applies only to that portion of the remedy which involved mixed funding in the first instance. For any portion of the remedy which did not involve mixed funding in the first instance there would be no obligation of the Fund for future remedial action under this provision.

Where in the course of the remedial action it becomes clear that the remedial selection was based on incorrect information, making the selection inappropriate, then the Government's portion of future liability will be recalibrated as part of a new remedial selection.

Section 122(e) is modified by the conference substitute in several ways. First, section 122(e) now requires the President, in certain circumstances, to provide notice and an opportunity for private parties to conduct the RI/FS when entering into negotiations under this section. The notice need not be accompanied by information on volume and nature of waste and ranking if this information is not available at the start of the RI/FS. A separate notice and information release should be provided for private parties who actually conduct the remedial action. Information on volume, nature and ranking of wastes should be made available routinely at this time. This section further provides that this disclosure provision is subject to the other privileges and protections of law, including attorney work product. However, such other privileges and protections of law do not apply to disclosure of information generated by the President to duly authorized Committees of Congress. At the same time, this provision does not extinguish or diminish disclosure requirements under other provisions of Federal or State Law.

Section 122(e)(2) is modified to preclude the President from conducting the remedial investigation and feasibility study (RI/FS), except as provided in section (e)(4), but not other studies or investigations under section 104(b), for 90 days. Nothing in this section precludes the President from initiating a remedial design during a moratorium for negotiaitons for private party action where an RI/FS has been completed.

Section 122(e)(3) is added by the conference substitute to require the President to develop guidelines for the preparation of non-binding preliminary allocations of responsibility. The President's decision to prepare or not prepare a non-binding preliminary allocation of responsibility (NBAR) at a facility is discretionary and therefore not subject to citizens suits or judicial review. The President has the discretion to allocate the total response costs among potentially responsible parties as the President deems appropriate, including parties for which the President is considering settlement agreements under subsections (b) and (g) of section 122.

Section 122(e)(3)(B), incorporated in the conference substitute from the Senate provision, authorizes the President to subpoena such information as the President deems necessary for performing an NBAR or to otherwise implement this section.

Section 122(e)(3)(C) prohibits the admission of NBARs in any proceedings, and section 122(e)(3)(D) requires that the costs of producing an NBAR be reimbursed by a potentially responsible party whose settlement offer is accepted by the President. If the offer is not accepted, such costs are considered costs of response for purposes of sections 111 and 107.

Section 122(e)(3)(E) provides that when the President has issued a non-binding preliminary allocation of responsibility, and a potentially responsible party has made a substantial offer for a response action which the president rejects, the President shall provide a written explanation of such rejection.

In implementing this provision, the President will establish threshold percentage criteria governing situations when the explanation needs to be provided. A substantial offer is one which represents a commitment by the potentially responsible parties to undertake or finance a predominant portion of the total remedial action. Any substantial offer must provide for response or costs of response for an amount equal to or greater than the cumulative total, under the NBAR, of the potentially responsible parties making the offer. For a substantial offer to exist, all other terms must be agreed to.

The President need provide not more than one explanation per facility. The explanation shall be provided by the Administrator of the Environmental Protection Agency, in consultation with the Assistant Attorney General for Land and Natural Resources, following headquarters review in Washington. Due to the enforcement-sensitive nature of NBARs, all such allocations must be prepared solely by Federal employees.

Section 122(e)(6) is included in the conference substitute to clarify that no potentially responsible party may undertake any remedial action at a facility unless such remedial action has been authorized by the President.

Section 122(f)(2)(A) incorporates from the Senate provision the requirement for a mandatory covenant not to sue in a settlement agreement where the President, in his sole discretion, has rejected an on-site remedy that meets the requirements of section 121 and the President has required that the hazardous substances be taken off-site. The Conferees adopted the provision concerning a covenant not to sue for off-site transport under certain circumstances, in the context of new section 121 of CERCLA, relating to cleanup standards. Section 121(b)(1) provides that off-site transport and disposal of hazardous substances or contaminated materials without treatment should be the least favored remedial action where practicable treatment technologies are available. Section 121(b)(1) also requires that the President select a remedial action that is protective of human health and the environment, that is cost-effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. The requirements of this section reflect the findings and objectives of the Solid Waste Disposal Act, which find that certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes. The special covenant not to sue described in section 121(f)(2)(A) applies to the hazardous substances which are transported to and disposed of under the terms of the consent decree at a Solid Waste Disposal Act facility that satisfies the specific requirements of the Solid Waste Disposal Act and has received a final permit pursuant to Section 3005 of the Solid Waste Disposal Act.

Section 122(f)(2)(B), adopted from the Senate provision, provides for mandatory covenants not to sue when the hazardous substance is permanently destroyed. For purposes of the section 122(f)(2)(B) special covenant not to sue, the term "such facility" means that portion of the facility where the remedial action involving the treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of such substances has occurred. When a covenant not to sue is issued under this subparagraph (B) on the basis of application of treatment technologies involving "permanent immobilization" of hazardous substances or constituents of such substances, such technologies must change the fundamental nature and character of such substances. Placing the substance in a permanent storage container or other containment method would not constitute a permanent immobilization technology covered by this subparagraph.

The conference substitute deletes the House provision regarding a potentially responsible party's ability to obtain a covenant not to sue without a "reopener" for unknown conditions if that responsible party contributes to a "Groundwater and Surface Water Protection Fund" for any future problems at the facility. Instead, new section 122(f)(6)(B) is added to require, except in extraordinary circumstances, reopeners for unknown conditions. The provision now states that settlements shall not be granted without reopeners for unknown conditions, except in extraordinary circumstances where all other terms and conditions of the settlement agreement are sufficient to protect health and the environment from any future releases at or from the facility. This provision should be implemented in a manner consistent with the current application of the Administration settlement policy as to unknown conditions. In addition, section 122(f)(6)(C) was added, also consistent with current settlement policy, to state that "The President is authorized to include any provisions allowing future enforcement action under sections 106 or 107 that in the discretion of the President are necessary and appropriate to assure protection of the public health, welfare and the environment."

As set forth in the discussion relating to section 122(a), the decision of the President to use the de minimis settlement procedures under section 122(g) is discretionary.

Section 122(g) is further modified to clarify that the Attorney General must give prior approval for administrative orders for settlements where the total response costs at a facility are in excess of $500,000. A comparable clarification, limiting the applicability of the subsection to facilities where the total response action does not exceed $500,000, was made to section 122(h)(1) and (2), regarding cost recovery under section 107.

Section 122(m) is added to the conference substitute because there are inconsistent provisions in the House and Senate versions regarding the circumstances under which settlement agreements, including covenants not to sue, could be set aside for reasons such as fraud, misrepresentation, and mutual mistake of fact. All of these provisions are combined in a single provision to avoid confusion arising from the use of inconsistent language and to reflect the Conferees' understanding that the general principles of law regarding the setting aside or modification of consent decrees or other settlements will be applicable to all agreements and covenants not to sue under the Act.

Finally, new section 122(n), as set forth in the conference substitute, provides for the inclusion in section 308 of CERCLA of a separability provision. This provision states that if the provision regarding contribution protection for those whose settlements are incorporated in administrative orders rather than consent decrees is held unconstitutional, compensation for the amount of such contribution may not be obtained from the United States.

SECTION 123—REIMBURSEMENT TO LOCAL GOVERNMENTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment requires the Administrator to promulgate rules setting out procedures under which the Administrator will reimburse units of local government for expenses incurred in carrying out temporary emergency measures necessary to prevent or mitigate injury to public health or the environment associated with the release or threatened release of hazardous substances or pollutants or contaminants. The amount of any reimbursement may not exceed $25,000 for a single response. A cap for expenditures from the Superfund over a five-year period is included.

Conference substitute—The conference substitute includes a modified version of the House amendment. Reimbursement under this provision shall not include reimbursement for normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine emergency firefighting.

SECTION 124—METHANE RECOVERY

Senate amendment—The Senate amendment amends the definition of "owner or operator" contained in CERCLA to exclude a person who owns or operates landfill gas recovery equipment from the definition of "owner or operator" under certain circumstances. In addition, the Senate amendment provides that, unless the Administrator promulgates regulations under subtitle C of the Solid Waste Disposal Act, the owner or operator of such equipment shall not be deemed to be managing, generating, transporting, storing or disposing of hazardous or liquid wastes under that subtitle. However, if the condensate or other waste material removed from the landfill meets the criteria of section 3001 of the Act, then it is deemed to be a hazardous waste and regulated accordingly.

House amendment—The House amendment exempts landfill gas operators from liability in actions under sections 106 or 107 and State law for specified items. The exemption does not apply where a release is caused by the negligence, gross negligence or intentional misconduct of the landfill gas operator. The House amendment contains provisions similar to the Senate amendment addressing the condensate that is produced with the recovery of gas.

Conference substitute—The conference substitute adopts the Senate amendment with modifications. It provides a conditional exemption from liability under the Act for persons who own or operate methane-recovery equipment. This exemption does not apply to any release or threatened release if either the release or threatened release was primarily caused by the activities of such owner or operator, or the owner or operator otherwise would be liable under Section 107 if such owner or operator were not the owner or operator of such equipment. The conference substitute adopts the Senate provision addressing the condensate that is produced with the recovery of gas.

SECTION 125—CERTAIN SPECIAL STUDY WASTES

Senate amendment—The Senate amendment to section 105 provides that, until the Hazard Ranking System is revised, special study waste sites described in section 3001(b)(2)(B) or (3)(A) of the Solid Waste Disposal Act may be listed on the National Priorities List only if the Administrator makes findings based on facility-specific data. Liability for costs, damages, or penalties may only be imposed if specific findings have been made and the Administrator supports those findings in court.

House amendment—The House amendment requires the Administrator to revise the Hazard Ranking System (HRS) as it applies to facilities that contain substantial volumes of fly-ash and other wastes discussed in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels in a manner which assures appropriate consideration for site-specific characteristics of such facilities.

Prior to the completion of the required revision of the Hazard Ranking System, the Administrator may not add to the NPL any facility that contains waste described in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act on the basis of an evaluation relying principally on the volume of such waste and not on the actual concentrations of the hazardous constituents of such waste. Nothing in this section affects EPA's authority to list or take other actions under the Act at facilities based upon the presence of substances other than waste described in section 3001(b)(3)(A)(i).

Conference substitute—The conference substitute adopts the House amendment. Provisions dealing with other special study wastes are discussed under section 105, supra.

SECTION 126—WORKER PROTECTION STANDARDS

Senate amendment—The Senate amendment makes two changes to section 111(c)(6) of CERCLA, which authorizes an employee training and protection program. First, the amendment directs the Secretary of Labor to promulgate standards for health and safety protection of employees engaged in emergency response and hazardous waste operations. Second, the amendment provides that the cost of training such employees, in an amount up to $10,000,000 per year, is to be considered a permissible cost of the Section 111(c)(6) program.

House amendment—The House amendment adds a new section to CERCLA relating to worker protection standards. The Secretary of Labor is directed to issue standards for the health and safety protection of employees, including State and local government employees, engaged in hazardous waste operations. Such standards must include various general provisions to ensure worker protection. Specifically, the standards must require that general site workers receive at least 40 hours of initial instruction off the site and 3 days of actual field experience. In addition, the standards must require that supervisors directly responsible for the hazardous waste operations receive the same training as general site workers plus 8 additional hours of special training. The standards must also prohibit untrained and uncertified persons from engaging in hazardous waste operations. The House amendment further directs the Secretary of Labor to issue interim final rules. In addition, it authorizes the National Institute of Occupational Safety and Health to award grants to nonprofit organizations for training and educating workers who are or will be engaged in hazardous waste removal, containment, or emergency resonse operations; $10,000,000 million per year from FY 86 through FY 90 are authorized to be appropriated from the general fund of the Treasury for such grants.

Conference substitute—The conference substitute adopts the House amendment, redrafted as a free-standing provision of law rather than as an amendment to CERCLA, with changes.

The conference substitute deletes "including employees of State and local governments" from subsection (a), but adds a new subsection (f), requiring EPA to promulgate a standard identical to the OSHA standard, to be applied to State and local government employees in States without State OSHA programs. This substitute assures that States which have OSHA approved plans retain the authority to promulgate appropriate standards, while States without OSHA approved plans follow EPA's promulgated standards. EPA must promulgate the standard within 90 days of final promulgation of the OSHA standard. The OSHA standard, not the EPA standard, would apply to any State that adopts a State OSHA program subsequent to enactment of the bill.

The conference substitute also makes changes to address the phasing-in of new regulatory requirements. The House amendment is modified to specify that interim regulations will remain in effect until one year after the promulgation of final regulations, at which time the final regulations will take effect. Interim final regulations will take effect within 60 days after this section's date of enactment. The conference substitute also uses the term "promulgation" for "issuance" in subsection (a) of the bill, "proposed standards" for "minimum general requirements" in subsection (b), and "regulations" for "rules" in subsection (d).

The conference substitute includes the addition of a new subsection addressing the extent to which final regulations must include minimum general requirements. In proposing regulations, the Secretary of Labor must include all of the requirements listed under Section 126(b) of the House bill. After notice and comment on the proposal, the Secretary must include all of these requirements in the final plan unless the Secretary determines that the evidence in the public record considered as a whole, does not substantiate inclusion of one or more of the requirements in the final rule. This approach is intended to give the Secretary needed flexibility in promulgating new standards. The Secretary's determination could be challenged under Section 6 of the OSHA Act, based on the "substantial evidence rule".

The conference substitute also modifies the training requirements contained in the House amendment. The House amendment is clarified to make training standards applicable to employees whose jobs cause them to work directly with hazardous substances. In addition, the conference substitute modifies the training requirements for general site workers, onsite managers and supervisors to specify that such persons must have either 40 hours of instruction or its equivalent. Equivalent training includes the training that existing employees might have already received from actual, onsite experience.

Funding for the grants program is also changed to reflect the Senate's approach under Section 111(c) of CERCLA. Thus, Section 126(b)(4) of the House amendment, which authorizes appropriations from the general fund of the Treasury, is deleted. Finally, the conference substitute requires the National Institute of Environmental Health Sciences, rather than the National Institute of Occupational Safety and Health, to administer the program.

SECTION 127—LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

Senate amendment—The term "incineration vessel" is defined under section 101 of CERCLA. Incineration vessel liability under section 107 of CERCLA is equated to liability of facilities under section 107 of CERCLA. Financial responsibility requirements under section 108 of CERCLA are revised to direct the President to require additional evidence of financial responsibility for incineration vessels to reflect different risks posed by incineration vessels. The Marine Protection, Research and Sanctuaries Act of 1972 is amended to revise provisions which had been interpreted as preempting other legal remedies for damages by the decision in *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*. Section 107 of CERCLA is amended to clarify that a vessel owner would be liable in accordance with section 107 under maritime tort law and that physical damage to the proprietary interest of the claimant is not required as a condition of liability.

House amendment—The term "incineration vessel" is defined under section 101 of CERCLA. Incineration vessel liability under section 107 of CERCLA is equated to liability of facilities under section 107 of CERCLA. Financial responsibility requirements under section 108 of CERCLA are revised to allow the Administrator to require additional evidence of financial responsibility for incineration vessels to reflect different risks posed by incineration vessels.

Conference substitute—The conference substitute adopts the Senate amendments with regard to the definition of incineration vessel, liability under section 107 of CERCLA, and financial responsibility under section 108 of CERCLA. Regarding financial responsibility, the President shall require evidence of financial responsibility for ocean incineration under this section commensurate with the financial responsibility appropriate for activities with similar risks.

The conference substitute adopts a modification of the Senate amendment to the Marine Protection, Research, and Sanctuaries Act of 1972. This modification makes clear that the Marine Protection, Research and Sanctuaries Act of 1972 does not preempt any person's right (1) to seek damages or enforcement of any standard or limitation under State law, including State common law, or (2) to seek damages under other Federal law, including maritime tort law, resulting from noncompliance with any requirement or permit under the Marine Protection, Research and Sanctuaries Act of 1972.

The conference substitute adopts the Senate amendment with regard to liability under maritime tort law and the absence of physical damage to a claimant's proprietary interest.

Additionally, the Environmental Protection Agency has recently announced its decision to promulgate final regulations prior to issuing permits, including research permits, for incineration of wastes at sea. The Environmental Protection Agency should proceed promptly with its final regulations for all types of ocean incineration permits. These final regulations are expected to fully address all the comments received from the States and the public on the regulations proposed on February 28, 1985. The Administrator will promptly revise these final regulations, as appropriate, if required by subsequent research.

TITLE II--MISCELLANEOUS

SECTION 201—POST-CLOSURE

Senate amendment—The Senate amendment requires the Administrator of EPA to conduct a study and report to Congress on options for a program to finance the post-closure maintenance of RCRA-regulated hazardous waste treatment, storage and disposal facilities in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment. Provisions for the transfer of liability under section 107(k) of the original CERCLA are suspended until Congress receives the report and enacts subsequent legislation.

House amendment—The House amendment repeals the Post-closure Liability Trust Fund provisions of CERCLA that are in both the tax title and in section 107(k) of the original law. The amendment requires the Comptroller General to study and report to Congress on a program for the management of liabilities after the closure of hazardous waste disposal facilities that are regulated under the Solid Waste Disposal Act (SWDA or RCRA).

Conference substitute—Instead of repealing the Post-closure Liability Trust Fund provisions, the conference substitute includes a suspension of the liability transfer provisions. The Comptroller General is required to conduct a study and report to Congress on options for a program for the management of the liabilities after the closure of RCRA-regulated hazardous waste treatment, storage and disposal facilities in a manner which complements the policies set forth in the Hazardous and Solid Waste Amendments of 1984 and assures the protection of human health and the environment. Specific elements from both the House and Senate amendments are included in the description of the program, the options to be considered, and the assessments that are to be conducted as part of the study.

SECTION 202—HAZARDOUS MATERIALS TRANSPORTATION

Senate amendment—The Senate amendment requires that each hazardous substance designated under subsection 101(14) be listed and regulated under the Hazardous Materials Transportation Act by June 1, 1986, or at the time of such designation, whichever is later, and places certain liabilities on common or contract carriers for such listed and regulated substances.

House amendment—The House amendment requires that each hazardous substance designated under subsection 101(14) be listed and regulated under the Hazardous Materials Transportation Act within ninety days after the date of enactment of CERCLA or at the time of such designation, whichever is later, and places certain liabilities on common or contract carriers for such list and regulated substances.

Conference substitute—The conference substitute adopts the Senate provision but changes the date of regulation from June 1, 1986, to 30 days after the date of enactment.

SECTION 203—STATE PROCEDURAL REFORM

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment establishes new section 309 of CERCLA. This section provides for a Federal commencement date for State statutes of limitations which are applicable to harm which results from exposure to a hazardous substance. State statutes of limitations define the time in which an injured party may bring a lawsuit seeking compensation for his injuries against the party alleged to be responsible for those injuries. These statutes usually run from two to four years, depending on the State. In the case of a long-latency disease, such as cancer, a party may be barred from bringing his lawsuit if the statute of limitations begins to run at the time of the first injury—rather than from the time when the party "discovers" that his injury was caused by the hazardous substance or pollutant or contaminant concerned.

The study done pursuant to Section 301(e) of CERCLA by a distinguished panel of lawyers noted that certain State statutes deprive plaintiffs of their day in court. The study noted that the problem centers around when the statute of limitations begins to run rather than the number of years it runs.

This section addresses the problem identified in the 301(e) study. While State law is generally applicable regarding actions brought under State law for personal injury, or property damage, which are caused or contributed to by exposure to any hazardous substances, or pollutant or contaminant, released into the environment from a facility, a Federally-required commencement date for the running of State statutes of limitations is established. This date is the date the plaintiff knew, or reasonably should have known, that the personal injury referred to above was caused or contributed to by the hazardous substance or pollutant or contaminant concerned. Special rules are noted for minors and incompetents.

Conference substitute—The conference substitute adopts the provision in the House amendment.

SECTION 204—CONFORMING AMENDMENT TO FUNDING PROVISIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment changes the name of the "Hazardous Substance Response Trust Fund" to the "Hazardous Substances Superfund". The amendment further provides that money in the Hazardous Substance Response Trust Fund shall be available only for expenditure as provided in Section 111 of CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986.

Conference substitute—The conference substitute adopts the House provision.

SECTION 205—LEAKING UNDERGROUND STORAGE TANKS

Section 205 of the conference substitute amends Subtitle I of the Solid Waste Disposal Act by adding a new subsection 9003(h) to establish a response program with respect to leaks from underground tanks which contain petroleum. Other amendments to Subtitle I are also included in this section.

The response program created by the new subsection (h) relies on two mechanisms to assure that the financial resources necessary to pay for corrective actions are available. First, under amendments to section 9003(c) and (d) of Subtitle I, the owner or operator of each underground storage tank will be required to maintain evidence of financial responsibility for taking corrective action and compensating third parties for property damage and bodily injury. In most cases the evidence of financial responsibility maintained by the owner or operator of the tank to satisfy this requirement will be adequate to pay the entire cost of cleanup and response. At most sites response costs are comparatively small, because cleanup proceeds quickly. A rapid response should continue to be a high priority in the implementation of the response program created by these amendments.

Second, the amendments establish a $500 million Leaking Underground Storage Tank Trust Fund to be financed by taxes on motor fuels to pay for response costs in a limited set of circumstances. Before regulations are published under the existing Subtitle I, the Administrator or the State may use the Fund to pay for a corrective action whenever that action is necessary, in the judgment of the Administrator or the State, to protect human health and the environment. The Administrator can also issue an order requiring corrective action.

After the effective date of the regulations, subsection (h) provides for use of the Fund where the financial resources of the owner or operator (or guarantor) are not available. Specifically, the Fund could be used in the following circumstances: where there is no solvent owner or operator; where it is necessary to take immediate action to protect human health and the environment and only the Fund is available to provide the resources; where an owner or operator has refused to cooperate in a cleanup or comply with an order by the Administrator or the State; and where expenditures at locations apart from the facility are necessary to protect human health or the environment from petroleum that has migrated from the facility pursuant to the provisions of paragraph (11) of subsection (h).

In addition there will be a very limited number of cases for which there is an identifiable and solvent owner or operator who is willing to cooperate in the cleanup, but whose financial resources (including the methods of financial responsibility required by a section 9003(c)(6)) will not be adequate to pay the entire cost of a response. In those cases, the Administrator or a State is authorized to use the Fund to pay the costs that exceed the level of financial responsibility required of the owner or operator as established by the Administrator in regulations under subsections 9003(c) and (d).

The purpose of these amendments is to assure rapid and effective responses to releases from underground storage tanks. The first step in a response is a recognition that a leak is occurring and is typically made by the owner or operator when he or she reports the presence of a release. Releases are likely to be recognized and reported sooner, if the financial uncertainties associated with a corrective action which face the owner or operator with a leaking tank are reduced or removed. The combination of an insurance requirement and a Fund to pay the costs which exceed the amount of the insurance is intended to reduce the financial uncertainty and encourage early reporting of releases.

DEFINITION OF PETROLEUM

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The response program established by this subsection is available only for tanks containing petroleum substances. The House amendment contains an explicit definition of the term petroleum. The definition is a restatement of the meaning of the term as established by current law in section 9001(2) of the Solid Waste Disposal Act. The new definition does not add or remove from regulation any substance or underground tank subject to current law.

Conference substitute—The conference substitute adopts the House provision.

FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions that limit the liability of owners or operators for the costs and damages caused by releases.

Conference substitute—The conference substitute does not include any limitations on liability as provided in the House amendment, but it does require the Administrator to promulgate requirements for maintaining evidence of financial responsibility.

Section 9003(c) of Subtitle I as it exists in current law requires the Administrator of the EPA to promulgate release detection, prevention and correction regulations as may be necessary to protect human health and the environment. Regulations for petroleum tanks satisfying these provisions are by law due to be promulgated by May, 1987.

Under current law the Administrator need not require that underground tank owners and operators maintain evidence of financial responsibility.

Section 9003(c) and (d) of current law is amended by the conference substitute to define this new element of the underground storage tank regulatory program.

The amount of financial responsibility required shall be sufficient to take corrective action and to compensate third parties for bodily injury and property damage caused by either a sudden or nonsudden release at an underground storage tank. Corrective action means cleanup of a release and, as in existing law and other portions of the conference substitute, includes relocation of residents, providing alternative water supplies and conducting exposure assessments.

The Administrator in promulgating financial responsibility regulations is given the authority to establish various classes and categories of tanks. In setting the amount of financial responsiblity necessary to satisfy the new requirement, the Administrator is authorized to vary the amount depending on the class or category to which the tank belongs. The conference substitute establishes a minimum amount which shall apply to all owners or operators unless the Administrator sets a lower amount by regulation. This minimum is $1 million per occurrence. The Administrator may also include in the regulations an aggregate amount per insurance policy.

The Administrator is authorized to set a minimum amount lower than $1 million per occurrence for some classes or categories of tanks. This authority can only be implemented by regulation and is intended to allow the Administrator to address the characteristics of tanks where the capacity of the tank is small and the volume moving through the tank is not large. The Administrator cannot set a minimum financial responsibility requirement of less than $1 million for tanks which are engaged in petroleum production, refining, or marketing, nor is the Administrator authorized to set a lower amount for tanks that dispense very large volumes, for instance, tanks at airports.

The Administrator has the authority to establish financial responsibility requirements in amounts which exceed $1 million for particular classes or categories of tank owners and operators.

The conference substitute provides the Administrator with the authority to suspend the financial responsibility requirement for a particular class or category or in a particular State. This suspension does not apply to a particular owner or operator who cannot get insurance. Rather the Administrator may suspend the requirement only after making a determination that no method of demonstrating financial responsibility is generally available to owners or operators in the class or category or the State. Before granting a suspension to the owners or operators in a particular class or category or State, the Administrator must also find that those owners or operators are taking steps to form a risk retention group or that the State is taking steps to form a fund for owners and operators in that State.

A suspension of the financial responsibility requirement for a class or category or in a particular State may only last for a period of 180 days. At the end of that period, the Administrator must make a new set of determinations before the suspension can be extended for another 180-day period. The Administrator must again find that no method of financial responsibility in the amounts required by the requlation is available to the owners or operators in the class or category or in a particular State. To extend the suspension the Administrator must also find that substantial progress has been made in establishing a risk retention group or the State fund or that it is not possible to establish such a group or the State is unwilling or unable to establish such a fund. The suspension may be extended indefinitely in 180-day cycles, but only after the dual determination.

The authority for the Administrator to suspend the financial responsibility requirement under Subtitle I does not extend to the requirements of Subtitle C. Hazardous waste land disposal facilities that have lost interim status under section 3005(e)(2) of the Solid Waste Disposal Act as a result of failure or inability to comply with the financial responsibility requirements of Subtitle C shall not be affected by this provision.

RESPONSE PROGRAM BEFORE REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Because regulations have not yet been promulgated under Subtitle I of the Solid Waste Disposal Act, the response program established by the House amendments is subdivided into two parts, one providing authority to respond before such regulations are issued and one providing authority to respond consistent with the regulatory provisions after they are promulgated. For petroleum tanks the Subtitle I regulations are due by law to be promulgated by May 1987.

Conference substitute—The conference substitute adopts the House amendment with modifications. The House amendment provides that the corrective action required with respect to particular release should take into account the factors including the business characteristics of the owner or operator. In this section the subject matter is corrective action and the only appropriate considerations are the factors necessary to adequately protect human health and the environment.

RESPONSE PROGRAM AFTER REGULATIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides authority for the Administrator (or a State) to use the resources of the Leaking Underground Storage Tank Trust Fund to undertake corrective action with respect to a release from an underground storage tank after the date on which the Subtitle I regulations are effective. Corrective actions undertaken by the Administrator pursuant to this paragraph will be required to meet the corrective action requirements established under the existing Subtitle I provisions. The requirement in that case is a corrective action as may be necessary to protect human health and the environment. The same requirements that the Administrator would apply to an owner or operator required to take corrective action would also apply to a corrective action undertaken by the Administrator or a State using the resources of the Fund.

The authority of the Administrator or a State to respond is limited by the House amendment to the following specific circumstances: (1) where no person can be found who is subject to the regulations and has the capacity to undertake a corrective action; (2) a situation where the Administrator must promptly respond to protect human health and the environment; and (3) where the owner or operator has refused to cooperate with an order by the Administrator to take corrective action.

Conference substitute—The conference substitute adopts the House amendment with two modifications. First, the conference substitute clarifies the authority of the Administrator to authorize States to undertake response actions with the resources of the Fund. Second, the conference substitute adds a fourth circumstance in which the Administrator or a State can use the resources of the Fund to undertake a response. Where the total costs of a corrective action exceed the financial responsibility requirement for a particular owner or operator and paying the costs above the insured amount would significantly impair the ability of the owner or operator to continue in business, the Fund may be used to pay all or a portion of the costs of the corrective action which exceed the amount of financial responsibility that the owner or operator has been required to maintain.

Paragraph (2)(C) of subsection (h) authorizes the use of the Fund to assure effective corrective actions. The term "effective" means that the corrective action is fully protective of human health and the environment and is implemented in a timely way so as to minimize the risk posed by the release. To assure effective actions, the Administrator or the State may implement the corrective action using the financial resources of the Fund and seek to recover the costs of such action under paragraph (6).

The costs of corrective action and the injury to persons and damage to property caused by releases from underground storage tanks is minimized when corrective action is taken quickly. The Fund should be used to facilitate quick response where such action is necessary to protect human health and the environment.

PRIORITY CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment instructs the Administrator to give highest priority in undertaking corrective actions with respect to releases from underground storage tanks to those releases which pose the greatest threat to human health and the environment.

Conference substitute—The conference substitute adopts the House amendment with a clarification that States shall be subject to the same priorities when they undertake corrective actions pursuant to this response program.

CORRECTIVE ACTION ORDERS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides the Administrator authority to issue orders to the owners or operators of underground storage tanks to take corrective action with respect to a release from a petroleum tank prior to the time that regultions implementing the order authority under existing law are promulgated. The Administrator is also provided authority to issue orders for corrective action after such date, although the Administrator has such authority under current law.

Conference substitute—The conference substitute adopts the House amendment with modifications to clarify the authority of a State operating under a cooperative agreement with the Administrator to issue orders under this paragraph until such time as the State has a regulatory program approved pursuant to section 9004. After regulations are promulgated, orders under this paragraph shall conform with the corrective action requirements of section 9003(c)(4) and meet the standard of section 9003(a).

Paragraph (2)(D) of subsection (h) authorizes the Administrator to use the Fund to respond to a petroleum release at a facility in two circumstances: 1) if the owner or operator refuses to comply with a specific order to clean up a release issued by the Administrator under authority of subsection (h), and 2) if the owner or operator refuses to comply with an order to take corrective action issued by the Administrator under section 9006 of the Solid Waste Disposal Act. In each of the two cases, the authority to use the Fund to respond only arises after the owner or operator has refused to comply with an explicit order for response to a release at a facility. Paragraph (4) of subsection (h) makes reference to this same authority of the Administrator to issue orders to take corrective action under section 9006 of the Solid Waste Disposal Act. The phrase "to carry out regulations issued under subsection (c)(4)" is not a new authority but refers to the authority contained in current law.

ALLOWABLE CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a provision which includes within the definition of corrective action the temporary or permanent relocation of residents and alternative water supplies. Also included in the allowable corrective action are studies to determine the health effects of a release from a petroleum tank. However, the cost of these studies cannot be recovered from owners or operators under the House amendment.

Conference substitute—The conference substitute adopts the House provision with modifications. Reference to studies of health effects are deleted. In addition to the temporary or permanent relocation of residents and the provision of alternative water supplied, the Administrator is authorized to conduct exposure assessments at the site of a release from an underground storage tank.

Paragraph (5) of subsection (h) provides the Administrator (or the State) with authority to conduct exposure assessments at the sites of underground storage tanks which have released petroleum. The Administrator is authorized to recover the costs of such assessments from the owner or operator of the tank under paragraph (6) and the term "exposure assessment" is defined in paragraph (10) of subsection (h).

The purpose of the assessments is to determine which individuals have been exposed to the released petroleum and to aid in the design of appropriate corrective actions. Included in the assessments might be actions such as: obtaining and analyzing air, water and soil samples; determining the levels of petroleum substances in tap or well water; determining the direction and spread of the substances through various pathways of exposure; monitoring homes and buildings in the area for vapors or other signs that the substance has migrated to a particular location; and comparing the data gathered at the site on the nature of the release and the resulting exposure to other information that is available on the effects of and risks posed by exposure to the released substances.

Paragraph (5) does not authorize a house-to-house survey to determine the health problems experienced by persons living or working in the surrounding community, nor does the language give the Administrator the authority to conduct epidemiological surveys or toxicological tests of the substances released. Although the Administrator may conduct health surveys and studies at the site under other authorities, nothing in this section authorizes the Administrator to pursue cost recovery for such studies from the owner or operator of the tank.

In determining whether to conduct an exposure assessment at a particular facility where petroleum has been released, the Administrator shall take into account the presence of buildings within the vicinity of the facility in which particularly susceptible individuals might work or reside, including schools, hospitals, nursing homes and clinics.

The legislation does not affect authority under other law to conduct health studies, health assessments, or health research.

RECOVERY OF COSTS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that the owners and operators of underground storage tanks shall be liable to the Administrator or a State for the costs of a corrective action undertaken pursuant to the authorities of this section. The standard of liability which obtains under this paragraph is the same standard of liability which would be applied pursuant to section 311 of the Federal Water Pollution Control Act.

Conference substitute—The conference substitute adopts the House amendment with modifications. The standard of liability is the same as the standard established by the House bill. The conference substitute adds a new paragraph (6)(B) relating to the equities of cost recovery which is to guide the decisions of the Administrator or a State in seeking recovery of costs. Paragraph (6)(B) is an instruction to the Administrator and the States with respect to the administration of the program and not a defense for an owner or operator facing a cost recovery action taken by the Administrator or a State.

Paragraph (6)(B) of subsection (h) gives the Administrator or the State the discretion to forego full-cost recovery from the owner or operator at some facilities where a release has occurred and the Fund has been used to pay for response actions. A full-cost recovery is not intended where the owner or operator has maintained financial responsibility as required by subsections (c) and (d) and the financial resources of the owner or operator (including the insurance or other methods of financial responsibility which was maintained) are not adequate to pay for the costs of a response without significantly impairing the ability of the owner or operator to continue in business. The "equities" in such a case would dictate that the Fund be used to pay the costs or portion of the costs of response which exceed the amount of financial responsibility that the owner or operator was required to maintain. The factors to be considered by the Administrator or the State in determining the equities are the same factors which the Administrator is to consider according to paragraph (5)(C)(iii) of section 9003(d) in establishing a minimum financial responsibility requirement for various classes and categories of underground storage tanks pursuant to subsection (d) of section 9003.

Paragraph (6) of subsection (h) provides for the recovery of costs of corrective action by both the Administrator and the States from owners and operators of tanks. To encourage aggressive cost recovery by the States, EPA may, in its discretion, make available additional funds for corrective action to those States that demonstrate an effective cost recovery program.

LIMITATIONS ON LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains a series of provisions limiting the liability of owners and operators for the costs incurred by EPA or a State when implementing the authorities of the response program established by this section.

Conference substitute—The conference substitute deletes the House amendment.

EFFECT ON LIABILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that no indemnification, hold harmless, or similar agreement or conveyance would be effective to transfer liability under subsection (h) from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release to any other person. Nothing in the paragraph, however, bars any agreement to insure, hold harmless, or indemnify a party to an agreement for any liability under section 9003 of the Solid Waste Disposal Act.

Conference substitute—The conference substitute adopts the House provision.

STATE AUTHORITIES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides that the response authorities assigned to the Administrator under the new subsection (h) could be delegated to States which are also delegated primary enforcement responsibility for the section 9003(c) provisions of Subtitle I. A State program is required to be substantially equivalent to the Federal program and the Administrator would make grants to the States from the Leaking Underground Storage Tank Trust Fund as necessary to undertake corrective actions with respect to releases of petroleum from underground storage tanks. The House amendment includes an allocation formula to distribute the revenue of the Fund among the States.

Conference substitute—The conference substitute does not follow the House amendment to establish a grant program, but rather allows a State to exercise the authorities of subsection (h)(1) and (2), if the Administrator determines that the State has the capability to run an effective program and the Administrator and the State enter into a cooperative agreement with respect to the actions to be taken by the State. These actions include issuing of orders to owners and operators to take corrective action, enforcing the orders, undertaking corrective action at sites where owners and operators will not or cannot respond, and recovering the costs of corrective actions paid for by the Fund. Pursuant to the conference substitute each State will be required to pay 10 percent of the cost of any corrective action undertaken either by the State or the Administrator using revenues from the Fund, after the effective date of the regulations promulgated under section 9003(c). Until such date, the full cost of such actions shall be paid for by the Fund. The Fund may also pay the full cost of a corrective action after the date of the regulations but only where the corrective action is necessary to respond to an imminent and substantial endangerment to human health and the State refuses to pay its share of the costs.

A State may issue orders or undertake corrective action with respect to a release of petroleum from an underground storage tank under paragraph (1) after the date on which the regulations are promulgated pursuant to section 9003(c) and until its program is approved under section 9004, but during this period all such actions or orders must be in compliance with the corrective action regulations promulgated by the Administrator pursuant to section 9003.

The Fund is not to be administered as a grant program with funds allocated to the States by some formula mechanism. Although the States are to be given maximum responsibility and flexibility to use the authorities of this section to assure early and effective responses, they will only receive disbursements from the Fund as necessary to respond to releases. Much of the detail of the program at the State level is not specified in the legislative language, but is to be developed and directed by the Administrator through the cooperative agreements. The fundamental provisions of each State program should be spelled out in a generic agreement between the State and the Administrator in advance, rather than negotiated on a site-specific basis in response to releases at a particular facility.

Subsection (h) authorizes the Administrator to use the Leaking Underground Storage Tank Trust Fund to pay Federal costs (and under a cooperative agreement, State costs) of corrective action, enforcement action, cost recovery and the reasonable and necessary administrative expenses directly related to those activities. The Fund is to be used to pay the costs associated with correcting a release of petroleum from a facility. The Fund is not intended as a source of funding to assist States in developing and implementing general technical capabilities or programs to support State legal offices in carrying out their general responsibilities.

FACILITIES WITHOUT FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The Administrator or a State is precluded from using the Fund to undertake corrective action at a facility where the owner or operator has failed to maintain the evidence of financial responsibility required by regulations promulgated pursuant to section 9003 (c) and (d). The Fund is intended to stand behind the owner or operator who has obtained methods of financial responsibility to protect human health and the environment.

In all cases, corrective action with respect to a release from an underground tank containing petroleum is to be undertaken by the owner or operator pursuant to a corrective action order, if the owner and operator is identifiable, has the resources and capability to respond and will comply with the instructions of the Administrator or the State. Where these conditions are not present, the Administrator or the State is authorized to use the Fund to undertake corrective action. In seeking to recover the costs of that corrective action, the Administrator or the State shall not take into account the equities described in subsection (h)(6)(B), if the owner or operator did not maintain the requisite level of financial responsibility.

Nothing, including the failure of an owner or operator to maintain financial responsibility, shall preclude an action by the Administrator or the State using the resources of the Fund to take corrective action outside the boundaries of the facility as authorized by subsection (h)(5) or as necessary to respond to a release or threat of a release which poses an imminent and substantial endangerment to human health or the environment.

METHODS OF FINANCIAL RESPONSIBILITY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Current law provides that financial responsibility for taking corrective action can be demonstrated through any of a series of specified instruments, including insurance, guarantees, surety bonds, letters of credit or qualification as a self-insurer. The House amendment allows the Administrator by regulation to establish other means which will be satisfactory to demonstrate financial responsibility.

Conference substitute—The conference substitute adopts the House provision with additional elements. The same modification made by the House amendment to section 9003(d) is included in the parallel provisions of section 9004 relating to financial responsibility demonstrations under authorized State programs. The Administrator can by regulation establish other methods of demonstrating financial responsibility which will be acceptable under authorized State programs.

In addition, the amendments made by the conference substitute strike a provision from current law. Current law provides that States can establish response funds that can be used by owners or operators of underground tanks to satisfy the financial responsibility requirements of Subtitle I. However, the language of section 9004(c)(1) would restrict such State-sponsored response funds to funds financed by fees on tanks. To assure that States have the maximum flexibility to create programs to be used to demonstrate financial responsibility for tank owners and operators within that State, the restriction on such funds as to revenue source is deleted from the current law by the conference substitute.

AUTHORITY TO ENTER FOR CORRECTIVE ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute adds a provision to existing law authorizing officers of EPA or the State to enter property for the purpose of taking corrective action.

COORDINATION WITH OTHER LAWS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes a savings clause providing that liability limits would have no affect on the liability of an owner or operator under any other law.

Conference substitute—The conference substitute includes an amendment to the existing "savings clause" of Subtitle I. Section 9008 of Subtitle I preserves the authority of States or their political subdivisions to impose regulations, standards or requirements on tank owners or operators which are more stringent than the regulations, standards or requirements imposed by the Federal government under Subtitle I. The conference substitute adds the phrase "or to impose any additional liability with respect to the release of regulated substances within such state or subdivision." to the Subtitle I provision. This substitute preserves the purpose of the House amendment which is to leave the liability of owners and operators for releases at underground storage tanks which is contained in other law, including State and local statutes and common law, unaffected by the new petroleum response program. Regulated substances include both petroleum and other hazardous substances.

POLLUTION LIABILITY INSURANCE STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Under the House amendment the Comptroller General of the United States is to conduct a study of pollution liability insurance, leak insurance and contamination insurance available to the owners and operators of petroleum storage and distribution facilities.

Conference substitute—The conference substitute adopts the House provision with modifications. The report is directed to the Congress as a whole. The report is due 15 months after the date of enactment.

SECTION 206—CITIZENS SUITS

Senate amendment—The Senate amendment authorizes citizens suits under CERCLA against two categories of persons: (1) those alleged to be in violation of any requirement which is made effective pursuant to the Act; and (2) those Federal government officials who are alleged to have failed to perform nondiscretionary duties under the Act. It is substantially similar to the House amendment, except that it does not authorize suits under CERCLA to abate imminent and substantial endangerment to public health and the environment.

House amendment—The House amendment adds a comparable new section 310 to CERCLA. It authorizes, in addition to the two categories of suits authorized by the Senate amendment, a third category of persons against whom such suits may be brought: those responsible for the actual or threatened release from a hazardous waste disposal site of a hazardous substance which presents an imminent and substantial endangerment to public health or the environment.

Conference substitute—The conference substitute adopts the House provision with modifications.

First, the substitute deletes the House provision which authorizes suits for imminent and substantial endangerment. The deletion of section 310(a)(1)(B) pertaining to imminent and substantial endangerment actions does not affect in any manner the rights of any person to commence a civil action pursuant to section 7002 of the Solid Waste Disposal Act. Under the citizens suit provision of the Solid Waste Disposal Act, any person is authorized to seek relief, including abatement, where the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an imminent and substantial endangerment to health or the environment. The section being deleted from this citizens suits provision covered "a hazardous waste disposal site," and thus, its operative effect would have been to cover only locations already covered under the comparable citizens suits provision of the Solid Waste Disposal Act. In fact, the Solid Waste Disposal Act provision applies to a broader range of locations since it applies not only to hazardous waste disposal sites, but also to sites where solid waste disposal may present an imminent and substantial endangerment. Thus, because the Solid Waste Disposal Act provision applies to localities where disposal of solid or hazardous waste as well as hazardous substances has occurred, this overlapping provision was unnecessary. Further, the Conferee's action does not affect or otherwise impair the rights of any person under Federal, State or common law.

Further, the conference substitute provides that the President and any other officers of the United States, including the Administrator of EPA and the Administrator of ATSDR, are subject to civil actions for failure to perform a non-discretionary act or duty. In addition, a civil action may be brought against any person who is alleged to be in violation of any standard, condition, requirement, order or agreement which has become effective pursuant to this Act. These provisions specifically cover the terms of interagency agreements relating to Federal facilities.

Venue for actions under this section against persons allegedly in violation of standards, or other requirements of CERCLA, is solely in the district court where the violation occurs; similarly, actions for alleged failures to perform a non-discretionary duty may be brought where the violation occurs, or in the United States District Court for the District of Columbia.

The intervention provision contained in both Senate and House amendments is deleted from this section because a similar amendment contained in section 113 is applicable.

In addition, the substitute also clarifies the terms of the citizens suits provision and limits the bar to bringing citizens suits to those matters where the President has commenced and is diligently pursuing a court action under this Act or under the Solid Waste Disposal Act. The House amendment, which had applied this bar when the President had commenced and was diligently pursuing an administrative order, has been deleted.

Finally, the conference substitute clarifies subsection 207(h) [which replaces subsection (g) of the House amendment and subsection (f) of the Senate amendment] to state that section 206 does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of judicial review of the selection of a response as provided in section 113(h) of this bill or as otherwise provided in section 309 of this bill regarding State procedural reform.

SECTION 207—INDIAN TRIBES

Senate amendment—The Senate amendment amends several sections of CERCLA to provide for the treatment of Indian tribes as States under the Superfund program. The amendments define "Indian Tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. An Indian tribe is excluded from the requirements of section 104(c)(3) regarding future maintenance and cost-sharing, and the assurance regarding availability of a hazardous waste disposal facility must be provided by the President. The President can enter into cooperative agreements with Indian tribes to carry out the Superfund program. For the purposes of sections 107(f) and 111, Indian tribes (or in certain cases, the United States acting on behalf of a tribe) are treated as trustees of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe (if such resources are subject to a trust restriction on alienation). Indian tribes are generally afforded substantially the same treatment as a State under sections 103, 104, 105, and 107.

House amendment—The House amendment adds a new section to CERCLA to provide for the treatment of Indian tribes as States under the Superfund program. The amendment defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska native village (but not including a regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. An Indian tribe is excluded from the requirements of section 104(c)(3) regarding future maintenance and cost-sharing, and the assurance regarding availability of a hazardous waste disposal facility must be provided by the Secretary of the Interior. The Administrator can enter into cooperative agreements with Indian tribes to carry out the Superfund program. For the purposes of sections 107(f) and 111, Indian tribes (or in certain cases, the Secretary of the Interior acting on behalf of a tribe) are treated as trustees of natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe (if such resources are subject to a trust restriction on alienation). Indian tribes are generally afforded substantially the same treatment as a State under section 103, 104, 105, and 107. The Administrator is authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a tribe operating under a cooperative agreement. The affected tribal government must concur in any permanent relocation of tribal members, and alternative land satisfactory to the tribe must be provided. The Administrator must conduct a survey on Indian lands and make recommendations on how tribal participation in the Superfund program can be maximized. This report must be submitted in early 1987. The statute of limitations for Indian tribes is extended until two years after the United States gives written notice to the tribe that it will not present a claim or commence an action on behalf of the tribe, or fails to do so within the time limitations specified in the Act.

Conference substitute—The conference substitute is the same as the Senate amendment, with the addition of the provisions of the House amendment regarding community relocation, the survey on Indian lands, and the extended statute of limitations.

SECTION 208—STUDIES RELATED TO RESEARCH AND DEVELOPMENT AND INSURANCE

Senate amendment—Research and Development: Section 153(d) of the Senate amendment requires the President to undertake a study (and report to the Congress within four years) of the effects of the standards of liability and financial responsibility requirements imposed by CERCLA on the cost of, and incentives for, developing and demonstrating alternative and innovative treatment technologies.

Insurance: The Senate amendment has no comparable provision.

House amendment—Research and Development: The House amendment has no comparable provision.

Insurance: Section 209 of the House amendment adds a new subsection (g) to section 301 of CERCLA, requiring the Comptroller General to appoint a designated study group. The study group is required to undertake a study of the insurability of liability imposed under CERCLA and other laws and is to evaluate, among other matters, specified listed matters. The report is to be submitted to Congress within 18 months.

Conference substitute—The conference substitute requires the Comptroller General to undertake a study of the insurability, and effect on standard of care, of liability imposed under CERCLA and other laws in consultation with representatives of specified groups. The study is to evaluate, among other matters, the effects of liability and financial responsibility requirements imposed under CERCLA on the cost of, and incentives for, the development of alternative and innovative treatment technologies. The report is to be submitted within 12 months of enactment.

SECTION 209—RESEARCH, DEVELOPMENT AND DEMONSTRATION

Senate amendment—Section 151 of the Senate amendment establishes as program for hazardous substance research and training. The section authorizes the Secretary of HHS (acting through appropriate agencies such as NIOSH and NIEHS) and the Administrator of EPA to each support, through grants, cooperative agreements and contracts, research and training concerning the health effects of hazardous substances. Accredited institutions of higher education, research institutions, a State or local health agency, or other appropriate entity may be eligible for awards, which are subject to peer review. HHS and EPA may separately or jointly appoint an Advisory Council to assist in the implementation of this section.

Section 153 of the Senate amendment establishes a program for alternative or innovative treatment technology research. The section authorizes the President to carry out a program of research, evaluation, testing, development and demonstration of alternative or innovative treatment technologies. At least 10 sites in whole or in part should be made available for this purpose, according to listed criteria. The President is required to enter into contracts and cooperative agreements with, and make grants to, any persons including public entities, accredited institutions of higher learning, and nonprofit entitites. Federal funding may be made available to assist in demonstration project. The President is authorized to conduct a technology transfer program, and to make information available to the public.

Sections 158 and 159 of the Senate amenment establish centers for the study of biological and genetic effects of wastes and materials found in the environment and centers for the study of biological and genetic effects on humans, animals and plants of materials found in the environment. These sections authorize the development and construction of regional centers at appropriately qualified universities, research and medical institutions for the study of the biological and genetic effects of wastes and material found in the environment.

House amendment—Subsection (a) of the House amendment establishes a program for hazardous substance research and training. The subsection authorizes the Secretary of HHS, acting through NIEHS, to fund basic research and training in the area of hazardous waste and its effects on human health and the environment. Research is funded through peer-reviewed grants, cooperative agreements or contracts made with accredited institutions of higher education. An Advisory Council is established to coordinate research and demonstration and training activities funded under this section.

Subsection (b) establishes a program for alternative or innovative treatment technology research and demonstration. This subsection authorizes and directs the Administrator of EPA to establish an Office of Technology Demonstration. Through this office the EPA may make available to approved applicants the use of sites and other assistance for the testing and evaluation of innovative technologies for treating hazardous waste. The section details the criteria and conditions under which a minimum of 10 projects will be selected annually for demonstration, and allows the use of Federal funds to assist in financing these demonstration projects. The EPA is required to maintain a central reference library, accessible by the public, of information relating to the utilization of alternative or innovative treatment technologies for remedial actions. The Office of Technology Demonstration is authorized and directed to carry out training of State and local personnel involved in the handling and removal of hazardous substances, and the management of hazardous substance facilities.

Subsection (c) establishes a program for hazardous waste research. This subsection authorizes the Administrator of EPA to conduct and support research into the effects on human health of hazardous substances and their detection in the environment.

Subsection (d) establishes university hazardous substance research centers. The subsection requires the Administrator of EPA to make at least 5 grants to institutions of higher learning to establish and operate 10 hazardous substance research centers. Recipients of grants shall be selected on the basis of criteria specifying location, available resources, and interdisciplinary needs.

Conference substitute—Subsection (a) of the conference substitute establishes the purposes of this section on Research, Development and Demonstration.

Subsection (b) establishes four new programs. One program is the hazardous substance research and training program. The provision is based on the House provision. The Conferees make some changes referring to training courses for State and local personnel, and clarifying the roles of NIEHS and NIOSH in training. The specifications of the composition of the Advisory Council were altered in line with the Senate provision. The requirements under this provision are not subject to citizen suits. Applicants receiving monies under this provision may contract with private sector companies.

Another program is the alternative or innovative treatment technology research and demonstration program. The provision is based on the House provision with a number of clarifying changes to the House language. Implementation of subsection (b)(8) is to be consistent with requirements under the Solid Waste Disposal Act.

Another program is the hazardous waste research program. The provision is based on House language but the word "waste" is changed to "substance". Language was added to ensure coordination of these activies with appropriate agencies.

Finally, a program for university hazardous substances research is established. The program is identical to the House provision. Applicants receiving monies under this provision may contract with private sector companies.

Sections 158 and 159 of the Senate amendment are deleted.

In all the programs established under this section, the Administrator is required to ensure, to the maximum extent practicable, that small businesses have an opportunity to participate in the programs.

SECTION 210—POLLUTION LIABILITY INSURANCE AND RISK RETENTION ACT

Senate amendment—The Senate amendment creates a new title of CERCLA, which provides exemptions from State insurance law (except with respect to designated law or regulation) for groups that meet the qualifications of a "risk retention group." The risk retention group must be formed under the law of at least one State, and the primary activity of the group must be assuming the pollution liability of its group members. The Senate amendment also provides purchasing groups with exemption from specified State laws and regulations.

House amendment—The House amendment is the same as the Senate amendment except that the Senate language includes (1) language clarifying that risk retention groups may provide coverage only for pollution liability and (2) a more restrictive definition of State.

Conference substitute—The conference substitute adopts the House provison with the addition of the Senate language clarifying that a risk retention group may provide coverage of only pollution liability. While this section defines "pollution liability" as liability for not only hazardous substances but also pollutants or contaminants, this section does not expand liability for either.

SECTION 211—DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

Senate amendment—Section 162 of the Senate amendment is similar to the House provisions regarding the Defense Environmental Program. The primary differences are that section 162 does not provide for a DoD research, development, and demonstration program, or require DoD to provide the ATSDR with a list of hazardous substances. In addition, the transfer account provisions in the Senate amendment provide procedures for reprogramming funds into and from this account and permit funding to be used for the removal of unsafe buildings or debris at former DoD sites.

House amendment—The House amendment establishes an Environmental Restoration Program for the Department of Defense (DoD) to provide for centralized control of environmental activities in consultation with the Administrator of the Environmental Protection Agency (EPA). The Secretary has the basic responsibility for carrying out response actions subject to the requirements of, and in compliance with, CERCLA. In implementing these provisions, the Secretary must consult with and is subject to the oversight of the Administrator of the Environmental Protection Agency. The Secretary of Defense is also directed to carry out a program of research, development and demonstration to develop innovative and cost-effective cleanup technologies. In order to facilitate the funding for response actions, an Environmental Restoration Transfer account is established in this section. The transfer account aggregates all environmental restoration funding in a single budget account and provides for the allocation of funds from the transfer account to the relevant appropriation accounts (including military construction), to give the Secretary of Defense the flexibility to address environmental requirements in a timely fashion. Additionally, the section requires DoD to provide the Agency for Toxic Substances and Disease Registry (ATSDR) with a list of the 25 hazardous substances which are most widely used by DoD. The section also requires the Secretary of Defense to annually report to Congress on the status of the Environmental Restoration Program and the implementation of CERCLA statutory requirements. Finally, section 213, in conjunction with sections 117, 120 and 121 of CERCLA provides for greater public awareness and increased involvement by States, localities, and individuals in DoD environmental restoration efforts.

Conference substitute—The conference substitute accepts the Senate provisions for the establishment of the DoD Environmental Restoration Program, with certain modifications. The conference substitute requires that the "Defense Environmental Restoration Program" be carried out subject to, and in a manner consistent with CERCLA, including sections 117, 120 and 121. All response actions are to be carried out in accordance with CERCLA, including the requirement that the Administrator of the Environmental Protection Agency must jointly select the remedial action. The Conferees accept the House provisions concerning the establishment of a research, development, and demonstration program, and the requirement that DoD provide a listing of hazardous substances with the ATSDR. The conference substitute adopts the House language regarding the Environmental Transfer Account, but allows funding to be used for the removal of unsafe buildings or debris at DoD sites as provided for in the Senate amendment. The conference substitute also accepts the House provisions regarding DoD notification of environmental restoration activities; the requirement for an annual report to Congress on environmental activities; and procedures governing DoD military construction environmental response actions.

SECTION 212—REPORT AND OVERSIGHT REQUIREMENTS

Senate amendment—The Senate provision amends section 301 of CERCLA to require the EPA Administrator and the Attorney General to submit to Congress an annual report regarding certain matters related to enforcement actions and the settlement process.

House amendment—The House provision amends section 301 of CERCLA to require the EPA Administrator to submit to Congress an annual report on the progress achieved in implementing CERCLA. In addition, the House amendment requires the appropriate authorizing committees of Congress to conduct annual oversight hearings on the implementation of CERCLA.

Conference substitute—The conference substitute adopts the House provision with the following modifications: (1) the report is to be submitted on January 1 of each year and is to cover the preceding fiscal year; (2) the EPA Inspector General is to review the portion of each report that is related to EPA activities and submit the results of such review to the Congress as part of the report; (3) the report is to include information on the status of certain remedial and enforcement actions and an estimate of the resources necessary for other Federal agencies to implement the Act; and (4) certain other minor modifications are made.

SECTION 213—LOVE CANAL PROPERTY ACQUISITION

Senate amendment—The Senate amendment directs the Administrator of the Environmental Protection Agency to establish a high priority for the acquisition of all properties (including non-owner occupied residential, commercial, public, religious and vacant properties) in the area which, before May 22, 1980, the President determined an emergency to exist because of the release of hazardous substances and in which owner-occupied residences have been acquired pursuant to such determination.

House amendment—The House amendment states that the Congress finds that the area known as Love Canal in New York was the first toxic waste site to receive national attention, and that because Love Canal came to the Nation's attention prior to the Superfund program, special provisions are required to properly compensate the residents of the area. It amends Title III of CERCLA to add a new section, authorizing the Administrator of the EPA to make grants of up to $2.5 million for acquiring private property in the Love Canal Emergency Declaration Area, subject to specified conditions. The amendment requires the Administrator to conduct and publish a habitability and land-use study assessing the risks associated with inhabiting the Love Canal area. For the purposes of sections 111 and 221(c) of this Act, the expenditures authorized by this section shall be treated as a cost specified in 111(c). These provisions do not affect implementation of other response actions within the area that the Administrator has determined (before enactment of this section) to be necessary to protect the public health or welfare or the environment.

Conference substitute—The conference substitute adopts the House provision.

TITLE III—EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

The Senate amendment and House amendment both establish programs to provide the public with important information on the hazardous chemicals in their communities, and to establish emergency planning and notification requirements which would protect the public in the event of a release of hazardous chemicals. The House amendment establishes the programs as a free-standing provision of law; the Senate amendment amends CERCLA to create the new programs. The conference substitute adopts the House approach with respect to establishing the programs as a free-standing provision of law and incorporates substantive provisions from both House and Senate amendments.

SECTION 300—SHORT TITLE

Senate amendment—Provisions on Community Right-to-Know and Emergency Planning are included in the Senate bill as amendments to CERCLA, and there is no short title.

House amendment—Provisions on Community Right-to-Know and Emergency Planning are included within the "Superfund Amendments of 1985" as a free-standing title, not amending CERCLA.

Conference substitute—The conference substitute adopts the House provision; establishes that the title be cited as the "Emergency Planning and Community Right-to-Know Act of 1986."

SUBTITLE A: EMERGENCY PLANNING AND NOTIFICATION

SECTION 301—ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES

Senate amendment—The Senate amendment provides that the Governor of each State designate emergency planning districts within 180 days of enactment and appoint members of an emergency planning committee for each such district within 210 days of enactment.

House amendment—The House amendment provides that the Governor of each State establish and appoint membership to a State emergency response commission within 6 months of enactment. If the Governor does not establish such a commission, the EPA Administrator is to operate as the State commission for that State. Not later than 6 months after a State commission is established, the State commission is required to designate local emergency response committees and appoint membership to those committees consistent with the requirements of the amendment.

Conference substitute—The conference substitute provides that the Governor of each State, within 6 months of enactment, designate and appoint a State emergency response commission, which may be one or more existing emergency response organizations that are State-sponsored or appointed. If no State commission is appointed, the Governor of the State is to serve as the commission and is responsible, therefore, for performing all of the duties assigned to the commission. This would include the public availability and information functions included in Section 324.

The section also provides that, within 9 months after the date of enactment, the State commission shall designate emergency planning districts. If affected States agree, these districts may be established across State lines. Within 30 days of establishing these districts, but no later than 10 months after enactment, the State commission should appoint members to the local emergency planning committee. At a minimum, membership must include those parties specified in the House amendment. However, existing local organizations or entities may be used as the local emergency planning committee provided that they include, or are augmented to include, those parties specified for membership on such committees.

Membership on these committees, and the designation of districts, may be revised as appropriate, and interested persons may petition a State emergency response commission to modify membership of a local committee.

Section 301 also requires that the local emergency response committee and State emergency response commission designate an official to serve as coordinator of information. Recognizing the importance of having an assured, available source of information for the reports required under this title, the officials designated to serve as the coordinator for information shall be government officials who will respond to requests for information from other State agencies, local officials, the public and other interested parties.

Section 302—Substances and Facilities Covered and Notification

Senate amendment—The Senate amendment provides that any facility which has a substance listed on the list published by the Council of European Communities in its Council Directive of June 27, 1982, on the Major Accident Hazards of Certain Industrial Activities, Annex II, in excess of the quantities published with that list, is subject to the requirements of this subtitle. Such facilities are required to notify State commissions that they are covered within 90 days of the publication by EPA of the Council of European Communities-list. In addition, the Governor of each State may designate additional facilities for emergency planning purposes.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute provides that the facilities covered by the bill's emergency planning requirements are those which have a substance on the list of substances published by EPA in November, 1985, in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidelines," in excess of a threshold planning quantity published by EPA within 30 days of enactment, at which time EPA will republish that list. Such substances are designated "extremely hazardous substances." Facilities which have such substances in excess of the established thresholds must notify the Emergency Response Commission that they are subject to this subtitle. The conference substitute also requires a facility to notify the State emergency response commission that it is subject to the requirements of this subtitle if the list of substances is revised or the facility acquires a new chemical and, thereby, is subject to these requirements. However, since this is only a notification that a facility is covered and is not chemical-specific, if a facility has already given notice of its coverage with regard to another chemical, no such subsequent notice would be required.

Given the need to get this program under way in a timely fashion, EPA is directed to publish these thresholds as interim final regulations which will be binding until such time as they may be revised by a final rulemaking which will be initiated when the initial thresholds are published. If the EPA fails to publish the interim final rule as required, the threshold will be set at 2 pounds for each substance until such time as EPA publishes such thresholds as an interim final rule or as a final rule. The substitute also provides criteria to be considered by EPA in revising the list and thresholds.

The substitute provides that a Governor or State emergency response commission may designate additional facilities to be subject to emergency planning requirements. Such designation shall be made following public notice and an opportunity for comment. Any faciity designated in this fashion is, according to section 325(a), not subject to the civil penalties which otherwise apply to facilities subject to the emergency planning requirements.

This section also requires that the State emergency response commission notify EPA of facilities subject to the requirements of this section. The Administrator may specify the frequency and form of notification by States of facilities subject to the subtitle.

SECTION 303—COMPREHENSIVE EMERGENCY RESPONSE PLANS

Senate amendment—The Senate amendment establishes requirements for local emergency planning committees, within 2 years of enactment, to develop comprehensive emergency plans which include specified provisions. Facilities subject to emergency planning requirements are required to provide information to the local committees for the purpose of developing and implementing such plans. EPA is required to publish guidance documents to assist in this planning, and to review such plans upon the request of a local committee.

House amendment—The House amendment establishes similar requirements with regard to the development and content of local emergency plans and the requirement for facilities to provide information to local committees. Emergency plans are required to be submitted to the Governor for review, and EPA is required to provide technical assistance to localities in the development and implementation of emergency plans.

Conference substitute—The conference substitute adopts the Senate amendment, with modifications to conform to the House amendment. Planning is to be conducted through a public process, and the identity of those facilities subject to the emergency planning requirements is to be public. The conference substitute provides that the National Response Team issue guidance documents and that the regional response teams may assist localities in developing and implementing emergency plans. The regional response teams have discretion regarding how and whether to review and comment upon specific plans and assist each locality.

SECTION 304—EMERGENCY NOTIFICATION

Senate amendment—The Senate amendment requires that, in addition to any notice required to be provided to EPA, local emergency committees and the Governor of any affected State be notified in the event of a release which requires reporting under section 103 of CERCLA. The amendment specifies the nature of the notice and establishes a requirement for follow-up notification as appropriate.

House amendment—The House amendment applies the notice requirement to releases from a covered facility which constitute a "hazardous substance emergency." This includes accidental or abnormal releases of a hazardous substance, as defined in CERCLA, that constitute an imminent and substantial endangerment to the public health or the environment, or a release that is subject to reporting to EPA under section 103 of CERCLA which, according to EPA regulations to be promulgated, constitutes a substantial threat to public health and the environment. The House amendment includes provisions similar to the Senate bill regarding the content of the notice and the requirement to provide follow-up notice as appropriate.

Conference substitute—The conference substitute establishes the requirement that emergency notice in the event of a release be provided to local emergency committees and the State in three specific instances. First, notice is required where the release is of an extremely hazardous substance, as referred to in section 302, and the release requires notice to EPA under section 103(a) of CERCLA. Second, notice is required where it is a release of an extremely hazardous substance that is not subject to notice under CERCLA, but the release is (a) not Federally permitted, as defined in section 101(10) of CERCLA, (b) is in excess of an amount set by EPA (or, if no amount has been set, in excess of 1 pound), and (c) the release occurs in a manner which would require notice under section 103(a) of CERCLA. This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA but for the fact that the substance is not specifically listed under CERCLA as requiring such notice. Third, the substitute requires notice in specificed instances where the substance released is not an extremely hazardous substance, as referred to in section 302, but the release must be reported to EPA under section 103(a) of CERCLA. In the case of such a release, notification under this section must be provided to local and State emergency response organizations if it exceeds a reportable quantity that has been established by EPA under section 102(a) of CERCLA or, if the release occurs after April 30, 1988, exceeds the fallback threshold under CERCLA of 1 pound. April 30, 1988, is the date by which EPA is required by amendments to CERCLA elsewhere in the conference substitute to publish reportable quantity thresholds for all substances listed under CERCLA. Prior to April 30, 1988, for a release reportable under CERCLA but for which no threshold has been set, the facility must give notice to the local emergency planning committee in the same form and at the same time as such notice is required by CERCLA to be provided to EPA.

The conference substitute provides that for a release to be reportable under this section it must extend beyond the site on which the facility is located. On-site releases that do not extend off-site are exempt from the requirements. In addition, releases which are continuous or frequently recurring and do not require reporting under CERCLA are not required to be reported under this section. Such release, if of an appropriate substance, would be reported under section 313.

The conference substitute includes a special provision for how notice is to be provided where there is a release with respect to transportation or storage incident to transportation, which under section 327 is exempt from all other provisions of this title. For such a release, the notice requirements of the section shall be fully satisfied by dialing 911, or in the absence of a 911 emergency telephone number, calling the operator and reporting the release.

The conference substitute adopts the Senate bill provisions regarding the content of an emergency notice and follow-up requirements, modified to incorporate provisions in the House amendment. The substitute requires that the notification indicate whether the substance is on the list of substances for which emergency planning is required, as provided in section 302(a). The specific chemical identity of the substance released must be provided on the notice, and is not provided trade secret protection under section 322.

SECTION 305—EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions authorizing the Federal Emergency Management Agency (FEMA) to carry out certain programs related to hazardous substances. This includes programs for the training of local emergency repsonse and other personnel, and grants of $5 million for each of years 1987 through 1990 in support of university-sponsored programs and programs of State and local governments designed to improve emergency planning and related capabilities.

The House amendment also includes a requirement that the EPA Administrator review and report to the Congress within 18 months of enactment on various emergency systems.

Conference substitute—The conference substitute adopts the House provision.

SUBTITLE B—REPORTING REQUIREMENTS

SECTION 311—MATERIAL SAFETY DATA SHEETS

Senate amendment—The Senate amendment directs, within 180 days of enactment, any facility at which a hazardous chemical is produced, used or stored to, to provide to the local emergency planning committee, the Governor of the State and to EPA a copy of a Material Safety Data Sheet (MSDS) for each hazardous chemical at that facility. In addition, a copy of such MSDS is to be provided within 90 days of any revision made to that form. EPA may set threshold amounts, with facilities which have less than that amount not covered by the requirements of the section for such chemicals.

House amendment—The House amendment requires an MSDS to be filed, for each hazardous chemical, with the local emergency response committee and such local and State officials designated to receive such form. Such forms are initially required within 12 months of enactment, with revised or new initial MSDS forms to be provided within 3 months of the time an MSDS form is revised or a new hazardous chemical is first brought onto a facility. The House amendment includes provisions requiring that an MSDS be provided to another facility when a hazardous chemical is first shipped to that facility. A facility owned who had not received an MSDS in this manner and who had made reasonable efforts to obtain such an MSDS would be exempt from the requirement to provide the MSDS to the specified local emergency committee and other persons.

Conference substitute—The conference substitute incorporates the basic requirement included in both the Senate and House amendments, but clarifies in the statute that the requirement to file an MSDS applies only to those facilities required to prepare or have available an MSDS under the Occupational Safety and Health Act of 1970 or regulation under that Act. MSDS forms must be provided to the appropriate local emergency planning committee, the State emergency response commission, and the fire department with jurisdiction over the facility. The forms must be provided at those times specified in the House amendment.

The conference substitute incorporates the definition of hazardous chemical used in both the Senate and House amendments, along with the exceptions included in that definition, modified in a manner so as to clarify the intent of both bodies. The term "hazardous chemical" has the meaning in 29 CFR 1910.1200(c) of the OSHA Hazard Communication Standard. The definition of the term "hazardous chemical" in section 311(e) defines the chemicals subject to the requirements of sections 311 and 312 of Title III.

Section 311(a)(3) of the conference substitute clarifies the treatment of mixtures. The OSHA Hazard Communication Standard defines a "hazardous chemical" as a "chemical which is a physical hazard or a health hazard." A "chemical" is defined as "any element, chemical compound or mixture of elements and/or compounds." According to OSHA, inclusion of mixtures in this definition has resulted in the creation of MSDSs for over 50,000 products.

To address this, section 311(a)(3) makes it clear that an owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture, by submitting an MSDS for each of the hazardous elements or compounds in the mixture. If the mixture if determined to be a "hazardous chemical" but contains no element or compounds which are hazardous chemicals, then an MSDS must be submitted for such mixture. Once an MSDS for a hazardous element or compound is submitted for one mixture, an MSDS for the same element or compound contained in another mixture would not have to be submitted. For purposes of the list, only the elements or compounds need be listed, mixtures need not. Of course, owners or operators are free to submit an MSDS on the mixture itself, or list the mixture, totally at their discretion.

An example of how this may work can be taken from the fragrance industry. Fragrances are produced by combining large numbers of chemical raw materials. A fragrance manufacturer may use 20 chemical elements, some of which may be hazardous, to produce hundreds of mixtures. Under this provision, they need to list only the elements or compounds, or provide the MSDS for each of the elements and compounds. An MSDS on each mixture is not required. This is especially important in the fragrance area because, by their very nature, the specific composition of these chemical mixtures may constitute highly sensitive and valuable trade-secret information, the disclosure of which could result in serious business injury.

This approach may not, however, either be practical or possible for customers who may obtain from the seller an MSDS for a mixture they purchase which indicates that the mixture is a "hazardous chemical." In such instances, the customer may lack the data or it may not be practical to provide a separate MSDS for each hazardous chemical in that mixture. In that situtation the customer would list the mixture or provide an MSDS for the mixture to State and local authorities under section 311. Moreover, in such instances, the customer may not be told by the seller the identities of some or all of the ingredients in the mixture because they are claimed as trade secrets under the OSHA Standard. In that case, the customer is only required to provide to State and local authorities under section 311 the information known to it. Typically, this would be limited to a copy of the MSDS received from the seller.

In order to reduce the potential burden on local emergency response committees, the conference substitute provides that, at the option of the facility, the requirements of this section can be met by filing with those specified to receive the MSDS a list of hazardous chemicals present at the facility, grouped according to categories of health and physical hazards set forth in the OSHA Act and its regulations. Where a list is supplied in lieu of individual MSDSs, it must include, for each chemical, the chemical name or common name and any hazardous component of each chemical, as these were provided on the MSDS. Upon request of a local emergency response committee, the actual MSDS would be provided by the facility. A public request for the MSDS would be made through that local emergency planning committee, which would be required to obtain the MSDS from the facility and make it available.

Section 311(b) gives the Administrator authority to establish threshold quantities for hazardous chemicals below which no facility would be required to report under section 311. In establishing such quantities, the Administrator must take into account the total quantity of a hazardous chemical present at a site. For example, in the case of a manufacturer which produces or obtains benzene and formulates 200 mixtures with the benzene, the threshold would apply to the total benzene at the facility, regardless of whether it is still in bulk storage or has been formulated into mixtures. However, for persons who purchase mixtures which contain hazardous chemicals in concentrations which may not be known to the purchaser, the Administrator may establish thresholds based on the total quantity of the mixture, including nonhazardous chemicals.

Some companies voluntarily may prepare MSDSs for chemicals that are not a physical hazard or health hazard within the meaning of the OSHA standard. Because such a chemical is not a "hazardous chemical" within the meaning of 29 CFR section 1910.1200(c) (and since an MSDS is not required for such a chemical under the OSHA standard), such a chemical would not be subject to the requirements of section 311 and section 312 of this Act.

SECTION 312—EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS

Senate amendment—The Senate amendment establishes an Emergency Inventory Form upon which, for all substances on which an MSDS is required, information is reported regarding the maximum amount of the hazardous chemical present at a facility during the preceding calendar year (in ranges), a description of the storage or use of the chemical, and its location. These reports would be filed with local emergency committees, the Governor of the relevant State and the EPA each year, or whenever a significant change occurs in the amount or presence of such a chemical. The first report would be filed within 6 months of enactment. EPA could set threshold amounts of the substances, below which a facility would not be required to report.

House amendment—The House amendment provides for an annual report containing similar information, as well as other information related to the substance and how it should be dealt with in an emergency situation. The reports are to be provided only to the local emergency response committee, with the first report due 18 months after enactment. EPA also has the authority to set reporting thresholds.

Under the House amendment this report has only to be filed for substances which EPA determines, due to specific factors, are likely to cause an imminent and substantial endangerment to public health or the environment. The House amendment also contains a provision for Superfund sites to provide these reports, and a study by the Office of Technology Assessment of the advisability of extending these reports to cover disposal sites regulated under RCRA.

Conference substitute—The conference substitute establishes a procedure to provide reporting of information on those chemicals subject to reporting under the Senate amendment. To minimize the burden of this reporting and to provide the information in a manner which is of maximum usefulness to government emergency response offices and personnel, other government officials with a need for the information, and to the public, a "2-tier" process for reporting is established. Under this approach, a summary of the information on the covered chemicals is provided in the form of an annual report, with information on specific chemicals available upon subsequent request made on a facility-by-facility basis. Further, to provide for the development of a manageable program, EPA is provided with the authority to establish reporting thresholds, including thresholds set by classes of chemicals or categories of facilities. In establishing quantity thresholds under section 312(b), the Administrator shall consider the degree to which the hazardous chemical, if released at the facility, would endanger the health of individuals in the community, including emergency response personnel.

Chemicals subject to reporting under subsection 312 are the same as those subject to subsection 311. As in section 311, the conference substitute clarifies the intent of the Congrees in the area of mixtures. The OSHA Hazard Communication Standard defines a "hazardous chemical" as a "chemical which is a physical hazard or a health hazard." A "chemical" is defined as "any element, chemical compound or mixture of elements and/or compounds." Section 312 makes clear that an owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture, by submitting an inventory form for each of the hazardous elements or compounds in the mixture. If the mixture is determined to be a "hazardous chemical" but contains no elements or compounds which are hazardous chemicals, then an inventory form must be submitted for such mixture. Of course, owners or operators are free to submit an inventory form on the mixture itself, totally at their discretion. If the facility owner or operator elects to submit an inventory form for each hazardous element or compound in the mixture (rather than for the mixture itself), the amounts of the element or compound present in the pure state and in all mixtures at the facility may be aggregated and reported on a single inventory form as the aggregate amount of the element or compound present at the facility as a whole.

The inventory form required under this section and the MSDS information required under section 311 are intended to provide both quantitative and qualitative information about the hazards of covered chemicals. It is therefore important for MSDS information submitted under section 311 to correspond with inventory information submitted under this section. It is expected that a facility owner or operator who elects under section 311(a)(3) to report on mixtures by reporting on the elements or compounds of each mixture will also report on the elements or compounds of such mixtures under this section. Similarly, if a facility owner or operator elects under section 311(a)(3) to report on each mixture, it is expected that inventory forms will be provided for each such mixture.

The initial step in the 2-tier reporting provision is an annual report provided to the local and State emergency response organizations, and to the fire department with jurisdiction over the facility. The first report is to be provided on or before March 1, 1988, with annual reports thereafter, each reflecting the preceding calendar year.

The information contained in the "Tier I" report is an estimate (in ranges) of the aggregate maximum and aggregate average daily amounts (in ranges) and the general location, of each category of hazardous chemicals at the facility. In establishing the breadth of the ranges, the Administrator may consider the degree of precision with which these broad categories of hazardous chemical can be reported. The categories for these reports are to be the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and its regulations (*i.e.,* carcinogens, corrosives, irritants). EPA is provided with the authority to modify the categories to group substances which present "similar hazards in an emergency" or to list "individual hazardous substances of special concern to emergency response personnel" for reporting purposes. Any modifications of categories for health or physical hazards shall correspond to any similar modifications made under the authority of section 311(a)(2)(A)(i).

The second stage of this information process involves reporting on specific chemicals. Such reports would be provided upon specific request for information from a particular facility. Therefore, under the authority of this statute, no person, including a government official, could establish as an annual reporting requirement the provision of these Tier II forms on specific chemicals.

The Tier II report on a specific chemical provided pursuant to a request would include the same information on the specific chemical that is provided for the aggregate chemicals on the Tier I report (although EPA could establish different ranges for each report), as well as a description of the manner of storage of the chemical and the location at the facility. In addition, the form would indicate whether the location information is to be kept confidential, consistent with section 324. The facility owner may always elect to keep Tier II location information from public disclosure.

Unlike the Tier I information, which relates to categories of hazardous chemicals, the Tier II information relates to individual chemicals. The quantity of a particular chemical that is used in a chemical manufacturing or processing operation may constitute valuable trade-secret information. For that reason, if precise quantities of the maximum and average daily amounts of the hazardous chemicals had to be provided, compliance with section 312(d)(2) might result in the compromise of valuable trade-secret information.

Sections 312(d)(2) (B) and (C) have been drafted to avoid unnecessary disclosure of trade-secret information, while at the same time, providing emergency response personnel, State and local officials, and members of the public the information needed to evaluate the nature and magnitude of potential public health hazards that might arise in the event of a hazardous substance emergency and to engage in effective emergency response planning. To that end, sections 312(d)(2)(B) and (C) contemplate that maximum and average daily inventory information will be provided in ranges.

In order to protect chemical process trade-secret information, the reporting ranges may need to be broad. At the same time, this is a community right-to-know provision, and the purpose of this report is to provide the public with information about chemicals at facilities. The reporting ranges should provide a reasonable accommodation between the disclosure necessary for community right-to-know and effective hazard evaluation and emergency response planning on the one hand, and protection of legitimate trade-secret information on the other, and not be broader than necessary to assure such trade-secret protection. EPA may want to look at the ranges used to develop the 1977 inventory reporting under section 8(b) of the Toxic Substance Control Act for guidance.

As regards the process for obtaining Tier II information, the conference substitute establishes separate procedures for (1) the State emergency response commission and local emergency planning committees and fire departments; (2) other State and local officials;

and (3) the public. Those in the first category can obtain Tier II information upon their own request. Those other State and local officials in the second category may have access to the information through the State commission or local committee, presumably through the information coordinators appointed under subsection 301 of this Act. The request, if made by such an official acting in his official capacity, may not be denied.

A process is established for public access to this information which also operates through the State commission and local committee. A person seeking information on a specific chemical must file a written request and indicate the specific facility for which information is requested. If the information has already been provided to a government official under the above procedure, the person will be given access to that information. This provision is designed to ensure that the public will have access to any Tier II information which has been provided to State and local officials acting in their official capacity, fire departments with jurisdiction over facilities, State emergency planning commissions or local emergency planning committees. It is intended that when forms are provided to government officials in accordance with this section, copies of such forms be retained in order to make them available to the public. The information procedures to be developed under section 301 should provide that this occur so that a facility need only provide Tier II information once each year for each chemical.

If the local Emergency Planning Committee or State Emergency Response Commission does not have the information in its possession, it is required to request information from the facility owner or operator regarding hazardous chemicals for which more than 10,000 lbs. were present at the facility at any time during the preceding calendar year. However, if less than 10,000 lbs. of the chemical were stored at the facility, the Committee or Commission would request the information if, in its discretion, it deemed such a request to be appropriate.

In order to assist the Committee or Commission in exercising this discretion, the member of the public seeking the information must include a statement explaining why the information is needed. Based on this statement, the Committee or Commission may or may not choose to make a request of the facility to provide the information. Although the conference substitute establishes a procedure for the public to have access to this information, and business establishments are certainly a part of "the public," this provision is not intended to provide a means for competitors to find out confidential business information about each other. State emergency response commissions and local emergency planning committees should exercise their discretion in light of this consideration. A State commission or local committee must respond to a request for Tier II information within 45 days of receiving that request.

The conference substitute also provides for access to the facilities by the fire department of relevant jurisdiction to conduct an on-site inspection of the facility. At such an inspection, the specific location information and volume information on hazardous chemicals would be provided.

Provisions contained in the House amendment related to the applicability of these requirements to Superfund sites and an OTA study regarding possible applicability to RCRA-regulated disposal sites are not included in the conference substitute.

SECTION 313—TOXIC CHEMICAL RELEASE FORMS

GENERAL

This section establishes requirements for annual reporting on releases of certain toxic chemicals to the environment. This reporting covers releases that occur as a result of normal business operations, as distinct from abnormal, emergency releases which must be reported under section 304.

FACILITIES COVERED

Senate amendment—The Senate amendment applies to facilities with ten or more employees that are in Standard Industrial Classification (SIC) Codes 20–39 (the manufacturing sector) and which manufacture or process more than 200,000 pounds per year of listed substances or which use more than 2,000 pounds per year of such substance for purposes other than manufacturing or processing. The President may apply the requirements of the bill to other particular facilities if the President determines that such action is warranted on the basis of proximity to other facilities that release the substance, history of releases at such facility, and other factors. This action may be taken by the President on his own motion or at the request of a Governor of a State, with respect to facilities within that State.

House amendment—The House amendment applies to any facility at which a listed extremely toxic substance is present during any applicable 12-month period in excess of a cumulative threshold amount established by the Administrator, and from which such substance is released to the environment.

Conference substitute—The conference substitute combines elements of the Senate and House amendments. Coverage of facilities is based on SIC Codes 20–39, except that the Administrator may add or delete SIC Codes to the extent necessary to achieve the purposes of this section. Additionally, the Administrator may apply these requirements to other particular facilities as provided in the Senate amendments.

Subparagraph 313 (b)(1)(B) of the conference substitute provides that the Administrator of EPA may add or delete SIC codes specified for coverage in the legislation. This authority is limited, however, to adding SIC codes for facilities which, like facilities within the manufacturing sector SIC codes 20 through 39, manufacture, process or use toxic chemicals in a manner such that reporting by these facilities is relevant to the purposes of this section. Similarly, the authority to delete SIC codes from within SIC codes 20 through 39 is limited to deleting SIC codes for facilities which, while within the manufacturing sector SIC codes, manufacture, process or use toxic chemicals in a manner more similar to facilities outside the manufacturing sector. For example, facilities within SIC code 2875 mix or blend for sale at the retail level various fertilizer products in response to specific customer needs. They may fall within SIC codes 20 through 39 because this activity may be classified as a "mixing or blending," which generally is a manufacturing activity. Yet, given the retail context and the nature of the blending and mixing done by these specific facilities, reporting by such facilities may not be appropriate. Subparagraph 313 (b)(1)(B) is intended to provide EPA the authority to address issues regarding the coverage of such facilities. It does not provide EPA the authority to change the overall scope of the reporting program for Toxic Chemical Release Forms.

TOXIC CHEMICALS COVERED

Senate amendment—The Senate amendment applies to releases to the environment of toxic chemical substances which, on the basis of available information and in the judgment of the President, are manufactured in or imported into the United States in aggregate quantities that exceed 500,000 pounds per year and, (i) based on epidemiological or other population studies, generally accepted laboratory tests, or structural analysis are known to cause or are suspected of causing in humans adverse acute health effects, cancer, birth defects, heritable genetic mutations, or other health effects such as reproductive dysfunction, neurological disorder, or behavioral abnormalities, or (ii) because of toxicity, persistence, or tendency to bioaccumulate in the environment, may cause adverse environmental effects. The President must publish a list of substances meeting these criteria by July 1, 1986. Unless and until this list is published, the reporting requirements apply to specific chemical substances identified in section 101 (14) of CERCLA. The President is required to review and revise the list of chemicals no less often than every two years. Any person may petition the President to add or delete a substance. The President also is authorized to modify the quantitative thresholds described above related to volume of chemical manufacture, processing or use, and aggregate chemical manufacture and importation.

House amendment—The House amendment requires the Administrator, within 24 months of enactment, to publish a list of extremely toxic substances to be subject to specified reporting requirements. These are to be hazardous substances and hazardous chemicals that are so acutely toxic that their release into the environment in any amount or form may present an imminent and substantial endangerment to human health and chemicals (such as vinyl chloride, benzene, asbestos, and poly chlorinated biphenyls) which are known to cause or are suspected of causing cancer, birth defects, heritable genetic mutations, or other chronic health effects in humans. If the Administrator fails to publish such list within such 24-month period, the list shall consist of the Acute Hazards List developed by the Administrator as part of its Federal Initiative for Responding to Accidental Releases of Air Toxics (described in the July 26, 1985, notice from the Office of Solid Waste and Emergency Response of the Environmental Protection Agency) until such list is published.

Conference substitute—Subsection (d) of the conference agreement requires reporting on listed toxic chemicals that cause, or reasonably can be anticipated to cause, significant adverse acute human health effects, various chronic human health effects, and significant adverse effects on the environment. A chemical should be listed if the Administrator determines, in the Administrator's judgment, that there is sufficient evidence to establish any one of the following:

1. Acute human health effects—The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

In making this determination, the Administrator is to consider individuals who are sensitive to a particular chemical. The determination that concentration levels capable of causing a significant acute adverse effect are reasonably likely to exist beyond facility site boundaries requires consideration of factors in addition to the chemical toxicity and other properties of a substance. For example, it is possible that a particular chemical, while it could cause a significant acute adverse effect at a high concentration level, would be very unlikely to reach that concentration level beyond the facility site boundary because of volume and pattern of use or release and other chemical-specific factors. To include a substance on the list on the basis of this criterion, the Administrator would determine that, within the United States, concentration levels that can cause the effects described above are reasonably likely to occur as a result of continuous or frequently recurring releases. The term "continuous or frequently recurring releases" is included only to distinguish routine releases that are a normal consequence of the operation of the facility from the episodic and accidental releases that are subject to section 304. There is no requirement to make any facility-specific finding, and it is not necessary actually to demonstrate these concentration levels or effects near any particular facility.

The phrase "beyond facility site boundaries" means any point outside the boundaries of the site on which the facility is located. With regard to some types of chemicals and patterns of discharge and dispersal, the highest concentration to which persons outside the site boundary may be exposed will occur adjacent to the boundary. In other cases, the highest concentration may occur some distance away, as when an air emissions plume cools and settles to the ground.

2. Chronic human health effects—The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or
(ii) serious or irreversible—
    (I) reproductive dysfunctions,
    (II) neurological disorders,
    (III) heritable genetic mutations, or
    (IV) other chronic health effects.

The phrase "in humans" in subsection (d)(2)(B) clarifies that health effects are to be considered insofar as they are or reasonably can be anticipated to be manifested in human beings as distinct from other organisms. It does not limit the Administrator to considering only substances for which there are human data.

3. Adverse environmental effects—The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or—

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

In determining what constitutes a significant adverse effect on the environment that would warrant reporting under this section, the Administrator should consider the extent to which the toxic chemical causes or reasonably can be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site:

(1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area.

(2) Abnormal number of deaths of organisms (e.g. fish kills).

(3) Reduction of the reproductive success or the vigor of a species.

(4) Reduction in agricultural productivity, whether crops or livestock.

(5) Alterations in the behavior or distribution of a species.

(6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of groundwater, and surface water and soil resources that have limited self-cleansing capability.

The use of the term "bioaccumulate" is not intended to distinguish between this term and other technical terms, such as "bioconcentrate" and "biomagnify" that sometimes are used interchangeably.

The number of toxic chemicals included on the list solely on the basis of adverse environmental effects as described above may not exceed 25 percent of the total number of listed chemicals.

In making a determination that a chemical meets any of the toxicity criteria under subsection (d)(2) the Administrator must consider generally accepted scientific principles of toxicity evaluation or, data from laboratory toxicity tests, or appropriately designed and conducted epidemiological and other studies of populations, available to the Administrator.

The Administrator, in determining to list a chemical under any of the above criteria, may, but is not required to, conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location.

Subsection (c) defines the list of toxic chemicals for which reports under this section will be required. This list will include chemicals designated in Senate Environment and Public Works Committee Print No. 99-169 including any revisions to such list made by the Administrator. The Administrator may add chemicals to the list or delete chemicals from the list at any time on the basis of the criteria set forth in section 313(d)(2). Any person may petition the Administrator to add a toxic chemical to the list on the basis of the acute or chronic human toxicity criteria. The Administrator must respond to such a petition within 180 days, either by initiating a rulemaking to add or delete the chemical to the list or publishing an explanation why the petition is denied.

A Governor of a State may petition the Administrator to add or delete a chemical from the list. In response to a Governor's petition to add (but not delete) a chemical to the list, the chemical automatically must be added to the list within 180 days after receipt of the petition unless the Administrator, within that time period, initiates a rulemaking to add the chemical to the list or publishes an explanation why the chemical does not meet any of the criteria for listing in section 313(d)(2). A chemical thus added to the list is subject to the same reporting requirements as all other chemicals on the list. This procedure would not, of course, shift the burden of proof in court from the Governor to EPA if EPA elects not to include a chemical proposed by a Governor on the list for reporting.

Subsection (d)(3) of the conference substitute provides that a chemical may be deleted from the list if there is not sufficient evidence to meet any of the criteria described in paragraph (2). A chemical need only meet one of the three criteria listed in subparagraphs (A), (B) or (C) of paragraph (2) to be listed. Similarly, a chemical will be deleted only if it fails to meet any of these three criteria.

In cases where the list of chemicals for which reporting is required refers to compounds of a "chemical" which is a group of related chemicals rather than a specific chemical with accompanying Chemical Abstracts Service (CAS) number, the person submitting the form may include aggregate data including all releases of those individual chemicals on one reporting form rather than listing data separately for each individual chemical in the group. Thus, for example, a single form can be submitted for "polybrominated biphenyls" as listed in Senate Environment and Public Works Committee Print No. 99-169 without identifying the individual polybrominated biphenyls being released or reporting release data separately for each one. This does not preclude the Administrator from requiring reporting on individual chemicals for which aggregate reporting otherwise would be required.

REPORTING THRESHOLDS

The conference substitute establishes certain threshold amounts for purposes of reporting toxic chemicals. For the reports required by July 1, 1988 on releases during calendar year 1987, reporting is required of persons who manufacture or process more than 75,000 pounds per year. This threshold decreases over the next two years to 50,000 pounds per year for the report due July 1, 1989, to 25,000 pounds per year for the report due July 1, 1990 and in subsequent years. Reporting is required of facilities that use more than 10,000 pounds per year of listed chemicals for purposes other than manufacturing or processing of the chemical. The Administrator may modify these threshold amounts for a particular chemical, provided the revised threshold results in reporting on a substantial majority of the aggregate releases of the chemical at facilities subject to this section, but it would not necessarily require reporting from each facility.

INFORMATION REQUIRED TO BE REPORTED

Senate amendment—The Senate amendment requires the Administrator to publish a form which will provide for the following information for each facility:

Name, location, and principal business activity.

Use or uses of each listed chemical.

Annual quantity of each chemical transported to the facility, produced at the facility, and transported from the facility as waste or product.

Annual quantity of each chemical entering each environmental wastestream.

For each wastestream the waste treatment methods employed and annual quantity of the substance remaining in the wastestream after treatment.

The Senate amendment allows facility owners to utilize readily available data required to be collected by other laws, or reasonable estimates where such data are not available. This section does not establish monitoring requirements beyond those required by other laws. The President must require that data be submitted in consistent units.

Reporting by letter is required if the President has not published the required form.

Data submitted under these requirements are to be made available to the public, consistent with the trade secret provisions of these amendments and section 104(e) of CERCLA, as amended. In addition, the President is required to computerize the submitted data and make them available to any person by computer telecommunications on a cost-reimbursable user-fee basis.

The Senate amendment also provides criminal penalties for knowingly omitting material information or making false statements.

These information requirements do not preempt any state or local law.

House amendment—The House amendment requires annual submission to local emergency response committees of status sheets on extremely toxic substances listed under section 311(c). These status sheets include:

The total amount of a listed chemical released to the environment during the preceding 12 months

A summary of reportable quantity releases reported under section 102 of CERCLA during the preceding 12 months and

A summary of reports to the State or the EPA Administrator of discharges in excess of permits issued under the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act.

Readily available data collected under requirements or other laws may be used for reporting requirements, and the House amendments do not require monitoring additional to that required under other laws. Data submitted are to be made available to the public, consistent with trade secret provisions in section 322 of the House amendments.

Conference substitute—The conference substitute requires the Administrator, no later than June 1, 1987, to publish a uniform toxic chemical release form that facilities will use to report annual releases to the environment. If the required form is not published, reports containing the required information must be made by letter. The form must provide for reporting of the following information:

Name, location, and principal business activities at the facility.

An appropriate certification regarding the accuracy and completeness of the report, signed by a senior official with management responsibility for the person or persons completing the report.

For each listed toxic chemical, whether the chemical is manufactured, processed or otherwise used, with the general category or categories of use;

an estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility during the preceding calendar year;

for each wastestream, the methods of waste treatment or disposal employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream; and,

the annual quantity of the toxic chemical entering each enviornmental medium.

The Administrator should include guidance regarding the certification required by subsection (g)(1)(B) in regulations published under this section. The purpose of the certification requirement is to assure that a senior management official reviews the report for accuracy and completeness.

The Administrator also should provide guidance regarding reporting of categories of use and ranges of amount of chemical present at the facility. The conference substitute provides for reporting categories of use and ranges of chemicals present because the exact use of an identified chemical at a facility or the exact amount present may disclose secret processes. In some circumstances, this information may need to be reported in terms of broad categories of use or amount ranges, similar to those utilized for the inventory of chemical substances in commerce required under section 8(b) of the Toxic Substances Control Act. However, consistent with the community right-to-know purposes of this program, the categories or ranges should be no broader than necessary to protect the trade secret.

The estimate of treatment efficiency required to be reported refers to the treatment efficiency typically achieved for each treated wastestream at that facility for the listed chemical as opposed to other components of the waste stream. It does not refer to the design efficiency or the optimum efficiency of the treatment system, unless such efficiency typically is achieved in practice.

Reporting on releases to each environmental medium under subsection (g)(1)(C)(iv) of the conference substitute shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities.

The purpose of this reporting requirement is to obtain available information about releases of listed toxic chemicals to the environment. To lessen the reporting burden, the conference substitute provides that readily available data (including monitoring data) collected pursuant to other provisions of law may be used for reporting under this section. Where data are not available reasonable estimates of amounts released may be used. The conference substitute does not require monitoring or measurement of toxic chemical releases beyond that required by other provisions of law. All monitoring or measurement data in the possession on the facility owner or operator must be reported.

The annual reporting forms are required to be submitted to the Administrator and to the State. The Administrator is required to establish and maintain in a computer database a national toxic chemical inventory based on data submitted under this section. These data are required to be made accessible to any person by computer telecommunication and other means on a cost reimburseable basis. In determining the costs of this database for purposes of reimbursement by users, the Administrator is to consider the cost of that portion of depreciable equipment devoted to this database as well as the cost of inputting the data, programming, searching, etc. However, the resulting fee schedule is not to be prohibitive with regard to public access, and the Administrator may reduce or waive otherwise applicable fees when, in the Administrator's judgment, such action is in the public interest and consistent with the purposes of this section.

The Administrator also must make the data available by means other than computer telecommunications, which may include responding to reasonable requests for printouts of data or analyses. Also, the Administrator may choose to publish the inventory or summaries of the data.

Subsection (h) describes the intended uses of the toxic chemical release forms required to be submitted by this section and expresses the purposes of this section. The information collected under this section is intended to inform the general public and the communities surrounding covered facilities about release of toxic chemicals, to assist research, to aid in the development of regulations, guidelines and standards, and for other similar purposes.

MODIFICATION IN REPORTING FREQUENCY

Senate amendment—The Senate amendment provides for three reports, each covering the preceding calendar year. The reports are due on June 30, 1987; June 30, 1990; and June 30, 1993.

House amendment—The House amendment requires that facilities report annually beginning 21 months after enactment or 9 months after becoming a covered facility for emissions of the preceding 12 months.

Conference substitute—Subsection (i) requires annual reports beginning in 1988 covering releases from the preceding calendar year. Beginning with the report due in 1994, the Administrator may alter the reporting frequency. The reporting period would continue to be calendar year releases for the previous calendar year. However, the Administrator could modify the reporting frequency either nationally or in a specific geogrpahic area for (1) all toxic chemical release forms under this section, (2) a class of toxic chemicals or a category of facilities, (3) a specific toxic chemical, or (4) a specific facility. These modifications may be different at different times.

For some chemicals or facilities the reporting frequency might be lengthened to two years, or three years, or longer. For others it could remain annual. The frequency could be lengthened at one point in time and shortened at another. A decision could even be made to require no further reports.

To make any changes in reporting frequency the Administrator must determine that several conditions have been met. The Administrator must conclude that a modification is consistent with the objectives of this section as set out in subsection (h) based on experience from previously submitted forms and on a series of additional determinations. These determinations are (1) the extent to which the information has been used by the Administrator, other Federal agencies, States, local governments, health professionals, and the public; (2) the extent to which this information is readily available to potential users from other sources and provided to the Administrator under other programs; and (3) when shortening the reporting frequency, the extent to which this change imposes additional and unreasonable burdens on facilities submitting reports.

In making a determination to alter the reporting frequency of information under this section, if the Administrator determines that specific localities or states regularly use information reported under this section on an annual basis and that this information is not readily available from other sources as determined by the Administrator under section 313(i)(3), it is expected that the Administrator will modify the reporting frequency using specific geographic limitations so as to preserve the annual availability of this information to such specific localities and states.

Any determination must be made through a rulemaking procedure under the Administration Procedures Act, and must be supported by substantial evidence. The Administrator must notify Congress of an intention to initiate a rulemaking at least 12 months, but no more than 24 months, before a rulemaking.

Finally, any modification to change a reporting frequency must be reviewed at least once every 5 years to assure that the justification for the modification remains valid.

Subsection (k) requires that by June 30, 1991, the Comptroller General of the United States, in consultation with the Administrator and the States, submit to Congress a report on this information reporting program. The report will include a description of steps taken to implement the program, the extent of usage of the information collected, and options for modifying the requirements of this section.

MASS BALANCE STUDY

Senate amendment—The Toxic Chemicals Release Inventory Form submitted by each reporting facility would require the submission of information on the quantity of chemical substances transported to the facility, produced at the facility, and transported from the facility as wastes or products.

House amendment—No comparable provision.

Conference substitute—Subsection (l) requires the Administrator to arrange for a study to be conducted by the National Academy of Sciences to evaluate several concepts involving the use of mass balance information. The report on the study must be submitted to Congress within 5 years. The term "mass balance" is defined as the accumulation of annual quantities of chemicals transported to, produced at, consumed at, used at, accumulated at, released from, and transported from a facility as a waste or product. It is anticipated that these quantities will be determined by a variety of methods including direct measurements, engineering estimates, estimates derived from differences between measurements, and other methods. In carrying out its responsibilities under this section the National Academy of Sciences should include an assessment of the quality of these measurements and the effect of inaccuracies on the purposes of the study.

The Administrator is directed to acquire information from two sources. First, the Administrator must acquire available mass balance information from States currently conducting or, within the study period, initiating mass balance-oriented annual quantity toxic chemical release programs. Second, if these programs fail to provide an adequate representation of classes and categories of industry, the Administrator may acquire mass balance information from a representative number of facilities in other States.

For example, assuming existing State programs include several facilities which manufacture organic chemical products but only one facility manufactures inorganic chemicals, the Administrator could acquire the information from inorganic chemical manufacturing facilities in other States if the Administrator believed additional information was necessary for the study.

All information acquired under this section must be made available to the public except upon a showing satisfactory to the Administrator that the information is entitled to protection under confidential business information provisions of section 1905 of title 18, United States Code.

There are several purposes for conducting the study. First, it should assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases. Although other provisions of this section require reporting of emissions, questions remain regarding the accuracy of these estimates. At issue is whether mass balance analysis provides an effective method of assessing the accuracy of these estimates.

Second, the study should answer questions regarding the value of mass balance information or components of it, such as production rate, in determining the waste reduction efficiency of different facilities or categories of facilities, and the effectiveness of toxic chemical regulations. For example, can this information reasonably be used to compare different facilities in the same business to determine whether one is applying more rigorous environmental control than another, or delineate whether reduced releases of chemcials reflect improved control or limited operation?

Third, the study should assess the utility of such information for evaluating toxic chemical management practices. For example, can this information enhance assessments of whether facilities are altering their operations to reduce the presence or release of toxic chemicals?

Fourth, the study should evaluate the implications of implementing a mass balance program concept on a national scale. This assessment should evaluate the value of information generated by such a program to the public and to regulators and policymakers at the local, State and national level together with the financial and other resources needed by governments and facilities to implement such a program and possible trade secret concerns that may arise.

Subparagraph (1)(3)(D) gives the Administrator enforceable authority to require submission of information necessary for this study.

SUBTITLE C—GENERAL PROVISIONS

SECTION 321—RELATIONSHIP TO OTHER LAW

Senate amendment—The Senate amendment provides that nothing be construed to limit the ability of any State or locality to require submission of information related to hazardous substances, toxic chemical substances, pollutants or contaminants or other materials, or to require the submission or distribution of information related to hazardous substances.

House amendment—The House amendment provides that nothing be construed to limit the ability of any State or locality to require submission of information related to hazardous chemicals or to limit the authority of any State to preempt any local law relating to the submission of information related to hazardous chemicals. However, the House amendment establishes certain requirements insofar as any State or local law related to the submission of MSDS forms, or information supplemental to such forms.

Conference substitute—Reflecting the policy of the Senate amendment and House amendment, the conference substitute provides that this title does not preempt any State or local law or affect or modify the obligations or liabilities of any person under other Federal law. The conference substitute incorporates the specific House amendment provisions with regard to the MSDS forms.

SECTION 322—TRADE SECRETS

Senate amendment—The Senate amendment provides that no person may claim that submitted information is a trade secret unless such person shows at the time the claim is made that the claimant has not disclosed the information to persons not entitled or required to receive it, that the person has taken reasonable measures to protect the information, that the information could not reasonably be discovered by another person in the absence of disclosure, and that the information provides a competitive advantage and disclosure is likely to lead to substantial competitive harm.

Certain information, however, may not be claimed a trade secret. With respect to hazardous chemicals as defined by section 101(14) of CERCLA, no person can claim as a trade secret the chemical name, physical properties, health and environmental hazards, potential routes of human exposure, disposal location, wastestream identity and quantity monitoring data, or hydrogeologic, geologic or groundwater monitoring data. With respect to toxic chemicals subject to reporting on annual releases, no person can claim the identity of a chemical or the quantity and nature of release to be a trade secret.

House amendment—The House amendment allows any facility owner or operator submitting information to any person to withhold the identity of the chemical from the submittal, if the claim that the chemical identity is a trade secret can be supported by showing that the identity has not been disclosed to persons not entitled to receive it, that it is not required to be disclosed by other Federal or State law, and that knowledge of the information may give the submitter an opportunity to obtain an advantage over competitors.

The Administrator is required to publish trade secret regulations which are identical, consistent with the above provision, and except for certain procedural variations, with regulations issued by the Secretary of Labor in the Occupational Safety and Health Administration Hazard Communication Rule. These regulations will be published by the Secretary in accordance with the Federal court ruling in *United Steelworkers of America, AFL-CIO-CLE* v. *Thorne G. Auchter.*

In addition, the Administrator is required to establish a procedure for any affected citizen to petition the Administrator to review a trade secret claim.

Conference substitute—The Conference substitute combines elements of the House and Senate amendments. Like the House bill, the conference agreement allows only the specific chemical identity (including the chemical name and other specific identification) to be claimed as a trade secret. The term "other specific identification" refers to information other than the name of the chemical, such as the Chemical Abstract Services (CAS) number, which uniquely identifies the chemical. When the specific chemical identity is claimed as a trade secret, the generic class or category of the hazardous chemical, extremely hazardous substance or toxic chemical must be submitted. Trade secret protection under this section does not apply to extremely hazardous substances in a notification required under section 304.

The generic class or category of chemical may be defined as broadly as is needed to protect the specific chemical identity from disclosure, but, consistent with the purpose of this title to provide information to the community and the public, it should be defined no more broadly than necessary to afford such protection. The Administrator may give guidance for choosing such classes or categories in implementing regulations, drawing upon experience under the Toxic Substances Control Act.

As explained below, any person entitled to withhold the specific chemical identity from a submission required by this title under sections 303(d)(2), 303(d)(3), 311, 312, and 313 must claim the identity is a trade secret on the basis of certain factors enumerated in the conference agreement, explain in the submittal the reasons why such information is claimed to be a trade secret, based on these factors, and submit the withheld identity to the Administrator together with a copy of the submittal.

Like the Senate bill, the conference substitute requires that a claim that the specific chemical identity is entitled to protection as a trade secret be documented at the time the claim is made. Consistent with the procedures in subsection (d), the claimant must support a claim of trade secrecy with assertions of fact concerning the criteria described below sufficient to show, if such assertions are true, that the specific identity is a trade secret based on those criteria.

The decision to claim that a specific chemical identity is a trade secret can be made by each facility based on the factors enumerated in section 322(b). In some cases a facility may purchase chemicals the identity of which are not considered to be trade secrets by the seller. However, the knowledge of their presence at the purchasing facility could effectively define for its competitors the process and/or products being made there. In such instances, these facilities may choose to claim these chemical identities as a trade secret. Such determinations would be subject to the trade secret claim limitations of this section.

No person may claim specific chemical identity as a trade secret unless the person shows each of the following with regard to the information withheld:

(1) That such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) That the information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) That disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) That the chemical identity is not readily discoverable through reverse engineering.

The term "reverse engineering" is not defined by the conference substitute. It is taken from the opinion of the United States Court of Appeals for the Third Circuit in *United Steelworkers of America, AFL-CIO-CLC* v. *Thorne G. Auchter,* 763 F.2d 728. (3d Cir. 1985).

Regulations required to be published by the Administrator under this section of the conference substitute are to be equivalent, with respect to the reverse engineering factor, with comparable provisions of the OSHA Hazard Communication Standard as it is revised pursuant to the opinion described above. The requirement for equivalence applies only to the reverse engineering factor in subsection (b)(4). The regulations under this section are to be "equivalent" to comparable provisions of the OSHA regulations, rather then identical to them, because the two regulations address different types of reporting covering different forms of chemicals. The OSHA regulation applies to chemicals in the workplace and chemicals used in the manufacture of products, while this title applies also to toxic chemicals released to environmental media. Thus, the Administrator may consider the ability of persons to detect the presence of a specific chemical at a facility by reverse engineering applied to environmental media containing facility wastes as well as to chemical products.

Subsection (d) establishes procedures for review of claims that specific chemical identity is a trade secret. This review may be initiated by the Administrator or it may be in response to a petition. Any person may initiate such a petition.

If a petition for review of a trade secrecy claim is filed, the Administrator is required within 30 days to review the explanation for the claim filed by the claimant and determine whether the explanation presents assertions which, if true, are sufficient to justify the claim. The petitioner does not have the burden of demonstrating the inadequacy of an explanation submitted in support of a trade secret claim.

If the Administrator finds that these assertions are sufficient, the Administrator must notify the claimant that he has 30 days to supplement the explanation with detailed information to support the assertions. If, after review of the supplemental information, the Administrator determines that the assertions in the explanation are true and the specific chemical identity is a trade secret, the Administrator must notify the petitioner of this determination. The petitioner may seek judicial review of the determination. If the Administrator determines, after review of the supplemental information, that the assertions in the explanation are false and that the specific chemical identity is not a trade secret, then the Administrator must notify the claimant that the Administrator intends to release the specific chemical identity. The claimant then has 30 days to appeal the determination and may seek judicial review of the determination if the appeal is unsuccessful.

Subsection (d)(4) establishes procedures to follow if the Administrator, in response to a petition or at his own initiative, determines that the explanation that accompanied the claim of trade secrecy presents insufficient assertions to support a finding that the chemical identity is a trade secret. In this case the Administrator is required to notify the claimant of this determination, and the claimant has 30 days to appeal the Administrator's decision or, upon a showing of good cause, to amend the original explanation by providing supplementary assertions to support the trade secret claim.

The opportunity to supplement the record on the basis of "good cause" provides an opportunity to provide the Administrator with information that was not available at the time the initial explanation was submitted, information that was not called for under regulations and guidance in effect at the time, that information was mistakenly not provided by a claimant who otherwise has acted in good faith to comply with requirements of this section, or for other similar purposes. This opportunity should not be construed to diminish the obligation of the claimant to submit an initial explanation that complies with the requirements of this section and applicable regulations.

If the Administrator does not reverse his determination after an appeal or review of supplementary material, then the Administrator is required to notify the claimant, who may seek judicial review of the Administrator's determination. If the Administrator does reverse his determination, then the procedures described above related to review of detailed information in support of a claim shall be followed.

Nothing in this section or implementing regulations shall authorize any person to withhold information required to be submitted to health professionals under section 323.

Subsection (f) provides that the explanation that must accompany a trade secret claim and any supplemental information required to be submitted by the Administrator shall be available to the public unless any person shows, to the satisfaction of the Administrator, that such information is entitled to protection as a trade secret under section 1905 of Title 18 of the United States Code. In such cases, the information shall be considered confidential, except that it may be disclosed in whole or in part to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

Subsection (g) requires the Administrator to provide trade secret information to a State upon request of the Governor of the State. Access to information under this subsection is not limited to information pertaining to facilities within the State of the Governor making the request. The provisions of section 325(d)(2) apply to the Governor and State employees.

Subsection (h) requires that, when the specific chemical identity is withheld from the public because of a claim of trade secrecy, appropriate government officials will identify the appropriate adverse effects associated with the chemical and provide this information to any person requesting information about the chemical. In the case of hazardous chemicals and extremely hazardous substances, the local emergency response committee or the State emergency response commission must perform this function with regard to the adverse health effects associated with a hazardous chemical or extremely hazardous substance. In the case of toxic chemicals for which annual release reporting is required under section 313, the Administrator is to include health and enviromental effects information in the computer database required to be maintained by subsection 313(i). The adverse effects identified should be described in general terms so as not to provide a unique identifier of a particular trade secret chemical.

Subsection (i) provides that all information reported to or otherwise obtained by the Administrator or his representatives under this title shall be made available to a duly authorized committee of Congress upon written request of such committee.

Since the Administrator will have records of trade secret chemical identity information, such information could be subject to requests under the Freedom of Information Act (5 U.S.C. 552). That Act prescribes short time deadlines for responding to requests for records. Section 322 of the Conference substitute provides specific, more extensive procedures for making trade secret determinations for chemical identity information, including longer time limits for the Administrator to act, and provides separate authority for petitioners to seek judicial review of determinations that such information constitutes a trade secret. As described above, section 326(a)(1)(B)(vi) provides a mechanism for seeking judicial review of the Administrator's failure to respond to a petition. Accordingly, with respect to requests for public access to specific chemical identity information claimed as trade secret under section 322, the provisions of the Conference substitute supersede the provisions of the Freedom of Information Act.

SECTION 323—PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS AND NURSES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment establishes provisions which allow access to trade-secret information by various health professionals who have a need for such information. It includes separate provisions related to access by treating physicians or other health professionals faced with a medical emergency, a physician or other health professional in instances where no medical emergency is present, and to State and local government health professionals. Except for medical emergencies, a statement of need is required when the information is requested and the person requesting the information must enter into a confidentiality agreement limiting that person's use and disclosure of the information.

Conference substitute—The conference substitute adopts the House amendment, with modification of the confidentiality agreements required in certain circumstances by the House amendment. In adopting provisions requiring a statement of need in specified instances, it is not expected that this will add a significant burden to those seeking access to the information. Nor is the confidentiality agreement any broader than that needed to protect as a trade secret the specific chemical identify, as determined under section 322.

The confidentiality agreement normally should not prevent consultation among health professionals or inhibit the normal dissemination of medical information, provided that the trade secret itself is not compromised. In most cases, it is the linkage of a specific chemical with a specific facility or company that constitutes the trade secret. In that case, the confidentiality agreement should not prevent a health professional from discussing in a public forum the relationship between a specifically identified chemical and a particular disease, for example, so long as the chemical can not be linked to the company that has claimed the specific chemical identity to be a trade secret.

SECTION 324—PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS AND FOLLOWUP NOTICES

Senate amendment—The Senate amendment requires that toxic chemical release forms, MSDS and emergency and hazardous chemical inventory forms be publicly available.

House amendment—The House amendment requires that all such forms and reports be publicly available, and requires that public notice be made of the availability of such forms.

Conference substitute—The conference substitute adopts provisions for the public availability of such forms, and public notice of such availability. With respect to making the information from the toxic chemical release forms publicly available, it is understood that the Administrator may fulfill this requirement by satisfying the requirements of section 313(j).

SECTION 325—ENFORCEMENT

Senate amendment—Failure by an owner or operator of a facility to notify appropriate local emergency coordinators and governors of a hazardous substance release is subject to a civil penalty, to be assessed by the President, of not more than $10,000 for a first violation, $25,000 for a second, $50,000 for a third and $75,000 for a fourth and subsequent violations. Procedures for assessing and challenging the penalties are prescribed. Criminal penalties of $25,000 or two years' imprisonment or both, for a first conviction of failing to notify, and $50,000 or five years' imprisonment or both for second or subsequent convictions are also provided. (Section 109 of the Senate bill).

The President may order a facility owner or operator to comply with a requirement (1) to submit material safety data sheets or an emergency inventory form to appropriate local, State or Federal officials (section 111 of the Senate bill); or (2) to notify the Governor that the facility is subject to emergency planning requirements or provide the local planning Committee with specified information. (Section 127 of the Senate bill). Violation of, or failure to comply with, the President's order subjects the violator to a civil penalty of not more than $25,000 for each day of violation.

Any person who knowingly omits or falsifies or misrepresents information on the Toxic Chemical Release Inventory Form, upon conviction shall be fined up to $25,000 or imprisoned for up to one year, or both. (Section 110 of the Senate bill).

House amendment—Any facility owner or operator who violates the requirements relating to hazardous substances reports, extremely toxic substances status sheets, or notification of a hazardous substance emergency will be liable for a civil penalty up to $20,000 for each violation.

Any owner or operator violating the requirements relating to material safety data sheets, to providing information to health professionals during a medical emergency, or to providing the Administrator with trade secret information when requested, will be subject to a civil penalty of up to $10,000 for each violation.

Doctors or nurses who request and are refused trade secrets information during a medical emergency may bring an action in Federal district court to require disclosure of the information.

The Attorney General is directed to conduct a study of the need for, and appropriateness of, criminal penalties for violations of emergency planning and community right to know provisions of law.

Conference substitute—The conference substitute is a combination of House and Senate provisions. With respect to emergency planning, section 325(a) gives the Administrator authority to order an owner or operator to provide required notification to State or local authorities under sections 302(c) and 303(d). A civil penalty of up to $25,000 for each day of violation is provided.

Section 325(b) gives the Administrator authority to assess civil penalties of $25,000 for each violation of the emergency notification requirements of section 304. Provision is also made for administrative and judicial penalties of $25,000 per day for a first violation and $75,000 per day for a second or subsequent violation, for each day the violation continues.

Section 325(b)(1)(E)(4) establishes, in addition to civil penalties, criminal penalties for any person who knowingly fails to provide notice in accordance with section 304. Such criminal penalties, of course, would not be mandatory should EPA determine that a violation has occurred, and standard prosecutorial discretion would apply.

Section 325(c) provides for administrative and judicial civil penalties of up to $25,000 for each day a violation of the reporting requirements of sections 312 or 313 continues and up to $10,000 for each day a violation of sections 311, 322 (a) and (f), and 323(b) continues.

Section 325(d) provides for administrative and judicial civil penalties of up to $25,000 for assertion of a frivolous trade secret claim. A criminal penalty of up to $20,000 or imprisonment of not more than one year or both is provided for unlawful disclosure of trade secret information.

Section 325(e) allows a health professional to bring an action in a Federal district court to obtain information from an owner or operator that has been requested under section 323 when the request has not been complied with.

Section 325(f) establishes procedures for the review and collection of administrative civil penalties.

The Senate provision imposing criminal penalties for falsification or misrepresentation of information on a Toxic Chemical Release Inventory Form is deleted as unnecessary because of applicable criminal penalties already in law under section 1001 of title 18 of the United States Code.

SECTION 326—CIVIL ACTIONS

Senate amendment—Citizens are provided a right to sue in Federal court to enforce standards, regulations, conditions, requirements and orders under the notification, emergency planning and hazardous substance inventory provisions of the Act and to seek the performance of nondiscretionary duties under these provisions by the President or delegees of the President. Prior to bringing such suits in Federal district court, a citizen is required to give 90 days notice to the State and the Federal government, and, where appropriate, to the alleged violator. No action may be brought under this provision if the State or Federal government is diligently prosecuting an enforcement action for the same violation. Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts. Conversely, the President or a delegee may intervene as a matter of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party. The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

House amendment—No comparable provision.

Conference substitute—The Senate provisions allowing any person to bring enforcement actions are adopted with respect to the following actions:

1. Against an owner or operator for failure to do any of the following:
   - (a) Submit a followup emergency notice under section 304(c).
   - (b) Submit a material safety data sheet or a list under section 311(a).
   - (c) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1).
   - (d) Complete and submit a toxic chemical release form under section 313(a).
2. Against the Administrator for failure to do any of the following:
   - (a) Publish inventory forms under section 312(g).
   - (b) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.
   - (c) Publish a toxic chemical release form under 313(g).
   - (d) Establish a computer database in accordance with section 313(j).
   - (e) Promulgate trade secret regulations under section 322(c).
   - (f) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.
3. Against the Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a).
4. Against a State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request.

State or local governments may commence a civil action against an owner or operator who fails to do any of the following:

1. Provide notification to the emergency response commission in the State under section 302(c).
2. Submit a material safety data sheet or a list under section 311(a).
3. Make available information requested under section 311(c).
4. Prepare and submit an inventory form under section 312(a) containing tier I information.

Any State emergency response commission or local emergency planning committee and, in the case of section 312(e)(1), a fire department with jurisdiction over the facility, may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) or section 312(e)(1).

Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g).

Actions against an owner or operator must be brought in the district court for the district in which the alleged violation occurred, and any action against the Administrator may be brought in the Federal District Court for the District of Columbia.

Prior to bringing suits, a person must give 60 days notice to the Administrator, the appropriate State and local officials and the alleged violator. No action may be brought under this section if the Administrator is diligently prosecuting an enforcement action for the same violation.

The court may order appropriate remedies for violations or failures to perform nondiscretionary duties, including the payment of any civil penalties provided under the Act for the violation.

Citizens are granted a limited right to intervene in such governmental enforcement actions brought in Federal courts. Conversely, the Administrator or a delegee may intervene as a of right in any citizen action brought under this section. The court may award the costs of litigation, including attorney fees, to any substantially prevailing party.

SECTION 327—EXEMPTION

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment provides exemption from the requirements of this Title to the transportation, including the storage incidental to transportation, of any hazardous chemical or hazardous substance.

Conference substitute—The conference substitute adopts the House amendment, clarified to assure the exemption of the transportation and distribution of natural gas. Therefore, with the exception of the provisions relating to emergency notification, the provisions of Title III do not apply to transportation or storage incidental to such transportation. The exemption relating to storage is limited to the storage of materials which are still moving under active shipping papers and which have not reached the ultimate consignee. This is consistent with the manner in which storage facilities are treated under the Hazardous Materials Transportation Act. For example, storage of materials in rail cars or in motor carrier warehouses would be exempt from the requirements of Title III (other than emergency notification) if the materials were under active shipping papers. On the other hand, storage of materials in facilities on the site of the consignor or consignee, even if such facilities are primarily transporatation-related, are subject to the provisions of Title III, since the storage would occur either before or after actual transportation of the materials.

SECTION 328—REGULATIONS

Senate amendment—The Senate amendment establishes Emergency Planning and Community Right-to-Know provisions as a part of CERCLA; provides general rulemaking authority to the Administrator under section 115 of CERCLA.

House amendment—The House amendment establishes rulemaking authority for EPA on specific provisions, but includes no general rulemaking authority.

Conference substitute—The conference substitute establishes general rulemaking for EPA Administrator.

SECTION 329—DEFINITIONS

Senate amendment—The Senate amendment defines such terms as were used in the Act.

House amendment—The House amendment defines such terms as were used in the Act.

Conference substitute—The conference substitute defines the following terms, which are used in the Act: "Administrator", "environment", "extremely hazardous substance", "facility", "hazardous chemical", "hazardous substance emergency", "Material Safety Data Sheet", "person", "release", "State", and "toxic chemcial".

SECTION 330—AUTHORIZATION OF APPROPRIATIONS

Senate amendment—The Senate amendment, which enacts Emergency Planning and Community Right-to-Know provisions as part of CERCLA, provides funding for the program from the "Superfund."

House amendment—The House amendment enacts Emergency Planning and Community Right-to-Know as a free-standing title, with funds to be provided under the existing EPA authorization.

Conference substitute—The conference substitute authorizes the appropriation of such sums as may be necessary to carry out this title for fiscal years beginning after September 30, 1986.

TITLE IV—RADON GAS AND INDOOR AIR QUALITY RESEARCH

Senate amendment—The Senate amendment creates a new program for indoor air quality research, including radon.

Section 502 includes findings of the Congress relating to radon and other indoor air pollutants. These include Congressional findings that radon poses a serious health threat; that various other indoor air pollutants may pose a health threat; that existing Federal programs for research of radon and other indoor air pollutants are fragmented and underfunded; and that an adequate information base concerning radon and other indoor air pollutants should be developed.

Section 503 provides the structure for the research program within the Environmental Protection Agency. Subsection (a) provides that the EPA is to gather data on all aspects of indoor air quality, coordinate Federal government and other research and development activities, and assess appropriate Federal actions to mitigate risks posed by radon and other pollutants.

Subsection (b) specifies that the research program must include pollutants monitoring, research of health effects, research of control technologies, demonstration of control measures, and dissemination of information to the public.

Subsection (c) provides for an advisory group representing Federal agencies and an advisory group representing States and other interested parties to assist the EPA Administrator in development of the research program.

Subsection (d) provides that the EPA is to submit an implementation plan for research under this section to the Congress within ninety days of enactment.

Subsection (e) provides for an interim report to Congress within one year, identifying locations and amounts of radon within structures throughout the United States and providing guidance and public information based on research findings to date.

Subsection (f) requires the Administrator to submit a report to Congress within two years of enactment. The report is to describe the state of knowledge concerning risks to human health of indoor air pollutants; the locations and amounts of indoor air pollutants in structures throughout the country; existing standards for indoor air pollutants suggested by Federal and State governments or scientific organizations and the risk to health associated with such standards; research needs and the relative priority of these needs; and the effectiveness of possible government actions to mitigate health risks associated with indoor air quality problems.

Subsection (g) states that nothing in the provision authorizes the Administrator to carry out any new regulatory program or other activity other than research, development, information dissemination and coordination activities.

Subsection (h) provides an authorization of $3,000,000 for Fiscal Years 1986 and 1987.

House amendment—The House amendment provides for a national assessment of radon gas and a demonstration program to test methods of reducing or eliminating the threat to human health of radon gas.

A national radon gas assessment program is to identify the locations in the United States where radon is collecting in residences and other structures and assess the relative levels of radon at different locations, to determine the threat to public health of various levels of radon at each tested location, and to determine methods for reducing radon levels. The Administrator is to submit a report to Congress within one year of enactment.

The EPA Administrator is also to conduct a demonstration program to test methods of reducing or eliminating radon where it poses a threat to public health. This demonstration program is to be conducted in the Reading Prong area of Pennsylvania and New Jersey, and at such other sites the Administrator considers appropriate. The Administrator is to submit interim and final reports on the status of the demonstration program.

A total of $2,000,000 is authorized to be appropriated to carry out these provisions in Fiscal Years 1986, 1987, and 1988.

Conference substitute—The conference substitute includes the House and Senate provisions, modified.

The substitute establishes a program entitled "Radon Gas and Indoor Air Quality Research."

The substitute includes findings based on those of the Senate amendment concerning the health threat posed by radon and other indoor air pollutants and the need for better coordination of research and more complete information.

The substitute also includes provisions of the Senate amendment concerning research program design, program requirements, advisory committees, and implementation plan. The provision in the Senate amendment requiring interim reports was deleted in the conference substitute. Information that would have been provided in that report will instead be provided through reports required under the national assessment and demonstration program provisions from the House bill, which are included in the conference substitute.

The substitute includes the national assessment of radon gas and the radon mitigation demonstration program provided in the House bill. These provisions, however, are included in section 118 of the Act, rather than Title IV.

The national assessment of radon is to be provided to Congress within one year of the date of enactment of this Act. The assessment is to address each of the points in the House provision and is also to include guidance and public information materials based on findings of research. The EPA is to address each item specified for the assessment to the extent possible.

The conference substitute also adopts the radon mitigation demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where they pose a threat to human health. The substitute [illegible] the reporting provision of this subsection to provide that annual reports of the status of the mitigation demonstration program are to be submitted to Congress not later than February 1 of each year, beginning February 1, 1987. In addition, a provision is added to this subsection specifying that liability, if any, for persons undertaking activities pursuant to the program under this section shall be determined under the principles of existing laws.

The Administrator shall take into consideration any demonstration program underway in the Reading Prong area of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

The substitute requires the Administrator to submit a report to Congress within two years of enactment of this Act regarding activities under this Title and making such recommendations as appropriate. While the provisions regarding the content of the report from the Senate amendment are not included in the substitute, it is intended that the report provided an overall assessment of radon and indoor air quality issues and that each of the provisions regarding report content from the Senate amendment be addressed in the report called for in the substitute.

The substitute also includes the provision of the Senate amendment which limits authority to research, development, and related reporting, information, dissemination and coordination activities specified in this section.

The substitute provides a total authorization of $5,000,000 to carry out activities under this Title and section 118 relating to the national assessment of radon and the radon mitigation demonstration program. The authorization is for Fiscal Years 1987, 1988, and 1989. In addition, the substitute provides that, of such sums appropriated in Fiscal Years 1987 and 1988, two-fifths are to be reserved for implementation of the radon mitigation demonstration program.

OTHER PROVISIONS

ABATEMENT ACTIONS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment amends Section 106 of CERCLA, which authorizes the President, through the Attorney General and the appropriate Federal district court, to enjoin or order the abatement of actual or threatened releases of hazardous substances. Section 106 is amended to provide that these enforcement authorities do not apply with respect to any release or threatened release resulting from the normal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Conference substitute—The Conferees have agreed not to include the amendment proposed by the House which would have prohibited the use of Section 106 abatement authority for the normal application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act. By agreeing to delete the House language, the Conferees do not intend to imply that the section 106 authority may or may not be used to require those who apply registered pesticides to undertake cleanup.

PESTICIDES

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment inserts "normal" prior to the phrase "application of a pesticide" in section 107(i).

Conference substitute—The conference substitute deletes the House provision.

COMMENCEMENT OF DRILLING FLUIDS, ETC., STUDY

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 208 of the House amendment requires the Administrator of EPA to commence the study required under section 8002(m) of the Solid Waste Disposal Act within 6 months after the date of enactment of these amendments.

Conference substitute—The conference deletes the House provision. The study has already begun.

RELEASES ASSOCIATED WITH BRINE DISPOSAL

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—Section 211 of the House amendment requires the Administrator of EPA to conduct a review of State programs for protection of human health and the environment in States which permit annular injection of brines associated with oil and gas production. However, the review is to be conducted only in States where there are more than 2500 active wells which use annular injection. If the Administrator finds inadequate enforcement of such State programs, the Administrator shall enforce the program or order such corrective action as may be necessary to assure protection of human health and the environment from releases associated with annular injection or other brine disposal practices. Civil penalties are provided for violation of or failure to comply with any enforcement or corrective action taken or ordered by the Administrator.

Finally, the House amendment requires that the review be completed, and any appropriate enforcement or corrective action taken or ordered, by the Administrator within 18 months after enactment of this section.

Conference substitute—The conference substitute deletes the House amendment. A similar provision has already been enacted in the Safe Drinking Water Act Amendments of 1986, P.L. 99-339.

STATE MATCHING GRANTS

Senate amendment—Section 141 of the Senate amendment contains a provision setting up a state matching grant program. The Fund is made available to provide grants of up to $1 million per State, to be matched by the State, for cleanup of small sites—including sites where there are leaking underground storage tanks—that are now covered under the Superfund program.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate provision.

ADMINISTRATIVE CONFERENCE

Senate amendment—Section 154 of the Senate amendment directs the Administrator of the Environmental Protection Agency to consider the 1984 recommendations of the Administrative Conference of the United States on alternatives to litigation in Superfund cases.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate amendment.

RECOMMENDED MAXIMUM CONTAMINANT LEVELS

Senate amendment—The Senate amendment contains at section 157 a requirement that the Director of the Office of Management and Budget (OMB) complete review and release for publication a list of Recommended Maximum Containment Levels (RMCLs) proposed by the Administrator of the Environmental Protection Agency under authority of the Safe Drinking Water Act and transmitted to OMB for review pursuant to the provisions of Executive Order 12291. A directive from the Congress mandating release of the RMCLs is included in the Senate amendment because the OMB review had extended for an inordinate period of time without action or the promise of action in the near term.

House amendment—The House amendment contains no comparable provision.

Conference substitute—The conference substitute deletes the Senate provision. Subsequent to inclusion of this provision in the Senate amendment, the Office of Management and Budget did release the RMCLs, and they were published as proposed regulations in the *Federal Register* on November 14, 1985, thus removing the need for the provision in the conference agreement.

LEAD-FREE DRINKING WATER

Senate amendment—The Senate amendment contains a title III provision which would prohibit the use of any pipe, solder or flux in any public water supply system or plumbing use to provide drinking water, require public notification by community water systems to their consumers of the adverse affects of lead in drinking water supplies, provide for state enforcement of these provisions, ban the use of lead solder, pipe or flux in new construction guaranteed by the Department of Housing and Urban Development or the Veterans' Administration, and require labeling or lead solder sold commercially as a hazardous substance under the Federal Hazardous Substances Act.

House amendment—The House amendment contains no comparble provision.

Conference substitute—The conference substitute deletes the Senate amendment. Subsequent to Senate adoption of these provisions in the Superfund amendments, they were also included in the conference report on the Safe Drinking Water Act Amendments of 1986 which become P.L. 99-339.

COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT

Senate amendment—The Senate bill contained no provisions relating to comprehensive oil spill pollution liability and compensation.

House amendment—Title IV of the House bill contains the Comprehensive Oil Pollution Liability and Compensation Act of 1986. Title IV proposes major versions to Federal law governing liability and compensation for oil pollution.

Conference substitute—The conference substitute adopts the Senate proposal that current law relating to oil pollution should not be changed in the context of H.R. 2005. The Senate Conferees agree to act on oil pollution liability and compensation legislation separately before the end of the 99th Congress.

TITLE V. SUPERFUND FINANCING

A. HAZARDOUS SUBSTANCE RESPONSE TRUST FUND ("SUPERFUND")

1. TRUST FUND PROVISIONS

Prior and Present Law

Superfund financing sources

Amounts equivalent to excise taxes on petroleum and feedstock chemicals (described below) were deposited in the Hazardous Substance Response Trust Fund ("Superfund"). These taxes expired on September 30, 1985.

In addition to taxes, $44 million was authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1981–85 (an aggregate of $220 million). Total tax and general revenue appropriations were intended to equal $1.6 billion over the five-year period.

The following additional amounts also are deposited in the Superfund:

(1) amounts recovered from parties responsible for hazardous substance releases;

(2) penalties assessed against responsible parties; and

(3) punitive damages for failure to provide removal or remedial action upon the order of the President.

Expenditure purposes

Amounts in the Superfund are available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

Allowable costs include the following:

(1) Costs of responding to the presence of hazardous substances on land or in the water or air, including cleanup and removal of such substances and remedial action.

(2) Certain costs related to response, including epidemiologic studies and maintenance of emergency strike forces.

(3) Payment of assessment and damage claims for injury to, or destruction or loss of, natural resources belonging to or controlled by Federal or State governments. No more than 15 percent of Superfund revenues attributable to taxes and general revenue appropriations may be used for the payment of natural resource assessment and damage claims.

Administrative provisions

Claims against the Superfund may be paid only out of the fund. If claims against the Superfund exceed the balance available for payment of those claims, the claims are to be paid in full in the order in which they are finally determined.

The Superfund has authority to borrow from general Treasury funds for the purposes of paying response costs in connection with a catastrophic spill or paying natural resource damage claims. Outstanding advances at any time may not exceed estimated tax revenues for the following 12 months; advances for paying natural resource claims may not exceed 15 percent of such revenues. All advances were required to be repaid by September 30, 1985.

The Superfund was created as a trust fund in the Treasury under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), but is not included under the trust fund code of the Internal Revenue Code.

Repayable advances

The Superfund taxes expired on September 30, 1985. Since that time, repayable advances have been made to the Superfund from general revenues under P.L. 99–270 ($150 million advance), and P.L. 99–411 ($48 million advance). These advances are to be repaid with interest with revenues derived from future Superfund financing sources.

House Bill

Superfund financing sources

Under the House bill, amounts equivalent to excise taxes on petroleum, feedstock chemicals, a new tax on imported chemical derivatives, and a new waste management tax, are to be deposited in the Superfund for fiscal years 1986–1990. Additional excise taxes on gasoline, diesel, and special motor fuels are to be used to fund a separate trust fund for leaking underground storage tanks.

In addition to taxes, $316.6 million is authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1986–1990 (an aggregate of $1.583 billion). Total tax and general revenue appropriations, together with interest and estimated recoveries, are estimated to equal $10.46 billion over the five-year reauthorization period.[1]

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The House bill generally retains the present-law Superfund expenditure purposes. However, no further expenditures are allowed for natural resource assessment and damage claims. Superfund moneys are also to be available for a number of additional expenditure purposes added by Title I of the House bill.

Administrative provisions

The Superfund is established as a trust fund under the Internal Revenue Code. Administrative provisions generally are the same as under present law; however, the Superfund has authority to borrow for any authorized expenditure purpose, rather than only for certain emergency purposes as under present law. Advances are also not to be limited to estimated tax revenues for the following 12 months (as they are under present law).

Transfer of hazardous waste

Under the House bill, no Superfund moneys are to be available for transfer of any hazardous substance from a facility at which a release (or threatened release) has occurred to a facility for which a final permit is in effect under section 3005(a) of the Solid Waste Disposal Act, if (1) such permit was issued after January 1, 1983, and before November 1, 1984; (2) the transfer is carried out pursuant to a cooperative agreement between the EPA and the State; and (3) fund moneys could not be used for the transfer, except for a provision contained in Title I of the House bill.

Effective date

The Superfund trust fund provisions are effective November 1, 1985.

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[1] This figure includes amounts deposited in the Leaking Underground Storage Tank Trust Fund.

Senate Amendment

Superfund financing sources

Under the Senate amendment, amounts equivalent to excise taxes on petroleum, feedstock chemicals, and a new Superfund excise tax on manufacturers are to be deposited in the Superfund for fiscal years 1986–1990. Total Superfund revenues for the five-year reauthorization period (including interest, but not recoveries) are intended to total $7.4 billion.

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The Senate amendment retains the present-law Superfund expenditure purposes (including resource assessment and damage claims).

In addition to these expenditure purposes, Superfund moneys are to be available for a number of additional expenditure purposes added by Title I of the Senate amendment, including costs of health assessments and toxicological profiles; technical assistance grants (not to exceed $75,000 per facility); matching grants to States for cleanup and stabilization of contaminated facilities (not to exceed $1 million per year per State); a $15 million pilot program for the removal of lead-contaminate soil; and research and training programs.

Administrative provisions

The Senate amendment generally follows the House bill. However, under the Senate amendment, outstanding advances to the Superfund are limited to estimated tax revenues for the following 12 months (as under present law), with all advances required to be repaid by December 31, 1990. The present-law 15-percent limit on borrowings to pay natural resource assessment and damage claims is also retained.

Transfer of hazardous waste

No provision.

Effective date

These provisions are effective on October 1, 1985.

Conference Agreement

Superfund financing sources

Under the conference agreement, amounts equivalent to excise taxes on petroleum and feedstock chemicals, a new excise tax on imported chemical derivatives, and a new environmental income tax are to be deposited in the Superfund.

In addition to taxes, $250 million of general revenue appropriations are authorized for the Superfund for each of fiscal years 1987–1991, for an aggregate of $1.25 billion. Total tax and general revenue appropriations to the Superfund, together with interest and estimated recoveries, are intended to equal $8.5 billion over the five-year reauthorization period.[2]

Other financing sources (including recoveries, penalties, and punitive damages) are the same as under present law.

Expenditure purposes

The conference agreement follows the House bill in deleting natural resource damage and assessment claims as a Superfund expenditure purpose. Expenditures are permitted for the remaining present law expenditure purposes and other purposes added by Title I of the conference agreement. These include expenditures authorized under section 111(a) (1), (2), (4), (5), and (6) and section 111(c) (other than section 111(c) (1) and (2)) of CERCLA, as in effect on the date of enactment of the conference agreement. Expenditures also are permitted for purposes authorized by a later-enacted law which is consistent with the purposes of these provisions.

Administrative provisions

The conference agreement follows the House bill, except that advances to the Superfund (including advances in fiscal year 1986) may not exceed estimated tax revenues for the following 24 months. All advances must be repaid by December 31, 1991.

Transfer of hazardous waste

The conference agreement follows the House bill, with a clarifying amendment.

Effective date

The Superfund trust fund provisions are effective on January 1, 1987.

Regulations

A number of provisions of Title V of this conference agreement provide that the Secretary of the Treasury or his delegate is to prescribe regulations. Notwithstanding any of these references, the conferees intend that the Treasury may, prior to prescribing these regulations, issue guidance for taxpayers with respect to the provisions of the conference agreement by issuing Revenue Procedures, Revenue Rulings, forms and instructions to forms, announcements, or other publications or releases. The conferees expect that the Treasury will provide taxpayers with this guidance as soon as feasible.

2. PETROLEUM TAX

Prior Law

An excise tax of 0.79 cent per barrel was imposed on (1) crude oil received at a United States refinery; and (2) petroleum products (including crude oil, natural and refined gasoline, refined and residual oil, and certain other liquid hydrocarbon products) imported into the United States for consumption, use, or warehousing. Revenues equivalent to the tax were deposited in the Superfund.

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[2] This figure does not include amounts deposited in the Leaking Underground Storage Tank Trust Fund, described below.

A credit against the petroleum tax was allowed if tax had previously been imposed with respect to the same product. The petroleum tax expired on September 30, 1985.

House Bill

The petroleum tax is reimposed at a rate of 11.9 cents per barrel, and extended through September 30, 1990. The reimposition of the tax is effective on November 1, 1985.

Senate Amendment

The petroleum tax is extended at its prior-law rate.

The tax generally expires after September 30, 1990. The tax would terminate earlier than September 30, 1990, if cumulative Superfund receipts from taxes and interest during the 5-year period reach $7.5 billion. The tax also would be suspended or terminated under certain circumstances if the unobligated balance of the Superfund exceeds $2.225 billion on September 30, 1988, or $3 billion on September 30, 1989. The extension of the tax is effective on October 1, 1985.

Conference Agreement

Reimposition of petroleum tax

Under the conference agreement, the petroleum tax is reimposed at a rate of 8.2 cents per barrel for domestic crude oil, and 11.7 cents per barrel for imported petroleum products (including imported crude oil).[3] Revenues equivalent to the tax are to be deposited in the Superfund.

The petroleum tax generally expires on December 31, 1991. The tax would terminate earlier than that date if cumulative Superfund tax receipts during the reauthorization period equal or exceed $6.65 billion. Additionally, if (1) on December 31, 1989 or December 31, 1990, the unobligated balance of the Superfund exceeds $3.5 billion, and (2) the Secretary of the Treasury, in consultation with the EPA Administrator, determines that such unobligated balance will exceed $3.5 billion on December 31 of the next following calendar year if no Superfund taxes are imposed during the intervening calendar year, then no tax is to be imposed during the intervening calendar year.

Credit for oil returned to pipeline

The conference agreement directs the Treasury Department to provide rules allowing a credit against the petroleum tax if a refiner removes crude oil from a pipeline, and subsequently returns a portion of such crude oil into a stream of crude oil in the same pipeline. The amount of this credit is to equal the product of (1) the rate of tax imposed on the crude oil removed from the pipeline by the operator and (2) the number of barrels of crude oil returned to the pipeline by the operator. Petroleum for which a credit is received is treated as not having been subject to tax. This provision is intended to allow a credit in appropriate cases, without requiring the tracing of specific quantities of previously taxed crude oil which is mixed with other crude oil in the pipeline stream.

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[3] Imported crude oil, which is subsequently received at a United States refinery, is to be taxed at the higher import rate only.

Effective date

These provisions are effective on January 1, 1987. The credit for certain crude oil returned to a pipeline is to apply to crude oil removed from a pipeline after that date.

3. TAX ON FEEDSTOCK CHEMICALS

Prior Law

Imposition of tax

An excise tax was imposed on the sale of 42 organic and inorganic substances ("feedstock chemicals") by a manufacturer, producer, or importer, at the rates listed in Appendix A (attached). The tax rates were set in 1980 and were limited to the lower of 2 percent of estimated wholesale prices or a cap equal to (1) $4.87 per ton for petrochemicals, and (2) $4.45 per ton for inorganic feedstocks. (Certain chemicals were taxed at lower rates.)

The feedstock chemicals tax applied to chemicals manufactured in the United States (as defined for purposes of the petroleum tax) or imported into the United States for consumption, use or warehousing. If a taxpayer used a taxable feedstock prior to sale, the tax was imposed on such use.

If one taxable chemical was used to produce a second, the tax on the first chemical was allowed as a credit against the second tax (to the extent of that second tax). The feedstock chemicals tax expired on September 30, 1985.

Exceptions to tax

Exceptions to the feedstock chemicals tax were provided for:

(1) butane or methane used as a fuel;

(2) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used to produce fertilizer;

(3) sulfuric acid produced solely as a by-product of (and on the same site as) air pollution control equipment;

(4) any taxable feedstock to the extent derived from coal;

(5) petrochemicals used to manufacture or produce motor fuel, diesel fuel, aviation fuel, or jet fuel; and

(6) cupric sulfate, cupric oxide, cuprous oxide, zinc chloride, zinc sulfate, barium sulfide or lead oxide which exist in transitory form in the process of refining nontaxable metal ores or compounds into other (or purer) nontaxable compounds.

Treatment of exported feedstocks

No exemption was provided for exports of taxable feedstocks.

Tax treatment of xylene

The Treasury Department had taken the position that xylene includes separated isomers of xylene for purposes of the feedstocks

tax. Thus, the production (or use) of such isomers constituted a taxable event.

Treatment of inventory exchanges

Under proposed Treasury regulations, exchanges of taxable chemicals were treated as sales of such chemicals.

House Bill

Reimposition of tax

The feedstock chemicals tax is reimposed subject to the modifications below, and extended through September 30, 1990.

Tax is imposed on prior-law feedstocks and, additionally, lead. The tax rates are set at the lower of 2.0 percent, of current estimated wholesale price or a cap equal to $6.25 for all chemicals (except xylene, discussed below), but not lower than the prior-law rate for any taxed chemical (see Appendix A).

Beginning in 1987, the tax rates are to be indexed annually for inflation, as measured by the average producer price index for organic or inorganic chemicals; however, tax rates are not to be reduced below the 1986 rates.

Under a special rule, the tax on nitric acid used by the producer to produce nitrocellulose could not exceed 24 cents per ton. The reimposition of the tax is effective on November 1, 1985.

Exceptions to tax

The exception for coal-derived feedstocks is repealed; other prior-law exceptions are retained. A conforming amendment is made adding lead to the substances which are exempt from tax if they exist in transitory form as part of a refining process.

In addition to the prior-law exceptions, exceptions to the feedstocks tax are provided for the following substances:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically recycled nickel, chromium, cobalt, or lead. (This exception does not apply for a period during which a required corrective action under RCRA or CERCLA has not been completed by the taxpayer.)

Effective date.—These provisions are effective on November 1, 1985.

Treatment of exported feedstocks

Taxable feedstocks sold for export by the manufacturer or producer, or for resale by a second purchaser for export, are exempt from tax.

If tax is paid on a chemical, and the chemical is later exported, a credit or refund is allowed to the person who paid the tax.

Effective date.—This provision is effective on November 1, 1985.

Tax treatment of xylene

It is clarified that, except for imports and exports, xylene does not include separated isomers for purposes of the feedstock tax.

Separation of xylene isomers constitutes use of a mixed stream of xylene and is treated as a taxable event.

Effective date.—This provision generally is effective November 1, 1985.

Taxes previously imposed on xylene (i.e., since April 1, 1981) are to be refunded or credited (with interest) to the taxpayers. To compensate for lost revenues, the tax rate on xylene is prospectively increased above the $6.25 per ton rate that otherwise would apply under the House bill (see Appendix A).

Treatment of inventory exchanges

Subject to registration and notification requirements, if inventories of taxable chemicals are exchanged, tax is imposed only upon the later sale or use of the chemical by the person receiving the chemical in the exchange. This rule does not apply if the receiving person would not be taxable on the sale of the chemical, unless such treatment would be as a result of the exemption for exported feedstocks (described above).

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax. However, the amendment applies to any exchange before January 1, 1986, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1985.

Senate Amendment

Extension of tax

Under the Senate amendment, the feedstocks tax is extended at its prior-law rates (see Appendix A).

The tax generally expires after September 30, 1990. Provisions are made for earlier suspension or termination of the tax under the same conditions as the petroleum tax (see A.2., above).

Effective date.—The extension of the tax is effective on October 1, 1985.

Exceptions to tax

The Senate amendment retains the prior-law exceptions to the feedstock tax, including the exception for coal-derived feedstocks.

As under the House bill, exceptions to the tax are added for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used (or sold for ultimate use) in the manufacture or production of animal feed; and

(2) domestically-recycled nickel, chromium, or cobalt. (Lead is not taxed under the Senate amendment.)

The exception for recycled substances does not apply for any period during which the taxpayer has been notified that it is a potentially responsible party for a site listed on the National Priorities List, unless the taxpayer is in compliance with all orders, notices, and judgments (under RCRA or CERCLA) with respect to the site.

Effective date.—This provision is effective on October 1, 1985.

Treatment of exported feedstocks

The Senate amendment is the same as the House bill.

Effective date.—This provision is effective on October 1, 1985.

Tax treatment of xylene

No provision.

Treatment of inventory exchanges

The Senate amendment is the same as the House bill but does not include the requirement that, for pre-1986 exchanges, the recipient must agree to be treated as the taxable person in order for the amendment to apply.

Conference Agreement

Reimposition of tax

The conference agreement follows the Senate amendment by reimposing the tax on feedstock chemicals at its prior law rates (except in the case of xylene, discussed below). No tax is imposed on lead or on any other chemical not taxed under prior law.

The tax on feedstock chemicals generally expires on December 31, 1991. The tax would be suspended or terminated earlier than that date under the same conditions as the petroleum tax.

Effective date.—The reimposition of the tax is effective on January 1, 1987.

Exceptions to tax

The conference agreement follows the Senate amendment by retaining the present law exception for coal-derived feedstocks. Other present law exceptions also are retained.

The conference agreement follows the House bill and the Senate amendment by providing additional exceptions for:

(1) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if such chemicals are used (or sold for ultimate use) in the manufacture or production of animal feed, and

(2) domestically recycled nickel, chromium, or cobalt.

As under the House bill, the recycling exception does not apply for any period during which a required corrective action under RCRA or CERCLA with respect to the recycling unit has not been completed by the taxpayer. Under a special rule, corrective actions (or the portions of corrective actions) relating to contamination of groundwater are to be treated as completed, for purposes of the recycling exception only, 10 years after the date on which the corrective action is required by the EPA Administrator (or a State acting pursuant to an authorized program). This special rule applies only if the taxpayer is in compliance with all orders, notices, and judgments under RCRA or CERCLA with respect to the site.

Effective date.—These provisions are effective on January 1, 1987.

Treatment of exported feedstocks

The conference agreement follows the House bill and the Senate amendment.

In addition to exempting exported feedstocks, the conference agreement allows a credit or refund (without interest) of taxes on feedstock chemicals which are used as materials in the manufacture or production of certain exported substances. The exported substances which trigger this credit or refund are to be the same as the substances taxed under the new tax on imported chemical derivatives (described in A.4, below). The credit or refund is to be made to the person who paid the feedstocks tax.[4]

Effective dates.—The exception for exported feedstocks is effective on January 1, 1987.

The allowance of a credit or refund for feedstocks used in the manufacture or production of certain exported substances is effective on January 1, 1989.

Tax treatment of xylene

The conference agreement follows the House bill.

Effective date.—This provision generally is effective on January 1, 1987.

Taxpayers who previously paid the tax imposed on xylene (i.e., from April 1, 1981, through September 30, 1985) may file claim for refund of the tax (with interest). The statute of limitations is extended to permit such refunds or credits. Such credits or refunds apply, under the conference agreement, only if the person who would otherwise be liable for the tax meets requirements similar to the general Code rules regarding credits or refunds of manufactures' or retailers' excise taxes (sec. 6416(a)).[5] However, if the manufacturer separately stated the tax and the purchaser did not pay the tax, then the refund or credit is allowable to the manufacturer. To compensate for lost revenues, the tax rate on xylene is temporarily increased, only for the duration of the five-year reauthorization period, from $4.87 to $10.13 per ton.

Treatment of inventory exchanges

The conference agreement follows the House bill.

Effective date.—The amendment regarding inventory exchanges applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). However, the amendment applies to any exchange before January 1, 1987, only if (1) the manufacturer, producer, or importer did not treat the exchange as a taxable sale, and (2) the recipient agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to inventory exchanges apply to exchanges after December 31, 1986.

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[4] As in the case of exported feedstocks, this person is required to repay the amount of tax to the exporter, or obtain the exporter's written consent to the credit or refund, in order to receive the credit or refund.

[5] In general, sec. 6416(a) allows a credit or refund only if the person who paid the tax establishes under regulations that he (1) has not included the tax in the price of the article and has not collected the amount of tax from the purchaser, or (2) has repaid the amount of tax to the ultimate purchaser of the article, or obtained his written consent to the purchase or refund.

Treatment of mixed hydrocarbon streams containing taxable feedstocks

Under the conference agreement, no tax is imposed on any organic taxable chemical while it is part of an intermediate hydrocarbon stream containing a mixture of different organic taxable chemicals. Instead, the isolation, extraction, or other removal of an organic taxable chemical from such a stream (or any other event causing the chemical to cease being part of the stream) is treated as a taxable use by the person causing such removal, and the tax is imposed on such person. This provision applies only if registration and certification requirements, similar to those imposed with respect to inventory exchanges, are satisfied. For purposes of this provision, organic taxable chemicals include any taxable feedstock chemical which is an organic substance.[6]

Effective date.—This provision applies retroactively to the original effective date of the feedstocks tax (April 1, 1981). As in the case of the rule regarding inventory exchanges, the provision applies to sales of any intermediate hydrocarbon stream before January 1, 1987, only if (1) the manufacturer, producer, or importer of the mixed hydrocarbon stream did not treat the sale of such stream as a taxable sale, and (2) the purchaser agrees to be treated as the taxable person for purposes of the tax.

The registration and notification requirements with respect to mixed hydrocarbon streams are effective on January 1, 1987.

4. TAX ON IMPORTED CHEMICAL DERIVATIVES

Prior Law

Crude oil, certain petroleum products, or taxable feedstock chemicals imported into the United States were subject to the petroleum or feedstocks tax (see A.2. and A.3., above). No tax was imposed on imports of products that are derived from these materials.

House Bill

Imposition of tax

A tax is imposed on the sale of any listed chemical derivative by the importer thereof. The initial list includes 47 chemical derivatives (see Appendix B).

The Secretary of the Treasury is to list any other imported substances determined to have more than 50 percent of their value derived from petroleum or taxable feedstock chemicals used as materials or process fuel. This determination is to be based on the predominant method of production. The Treasury may delist substances (including initially listed substances) as necessary to carry out the purposes of the tax.

Substances are taxable only if listed at the time of sale or use by the importer.

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[6] Taxable organic chemicals include the first 11 listed substances in section 4661 of the Code (acetylene, benzene, butane, butylene, butadiene, ethylene, methane, naphthalene, propylene, toluene, and xylene).

Amount of tax

The amount of tax is—

(1) the amount of tax which would have been imposed under the feedstocks tax on the taxable chemicals used as materials or process fuel, if such taxable chemicals had been sold in the United States for an equivalent use; or

(2) if the importer does not furnish sufficient information to determine the tax under (1) above, 5 percent of the appraised value of the imported substance at the time of import.

Procedure and definitions

The tax is imposed on the importer of a listed substance at the time such substance is sold or used. No tax is imposed if the petroleum or feedstock chemical taxes are imposed on the same sale or use.

The United States includes Puerto Rico and specified U.S. possessions (as defined for purposes of the petroleum and feedstock taxes).

Revenues from the tax are not covered over to Puerto Rico or the Virgin Islands under section 7652 of the Code.

Termination date

The tax terminates on September 30, 1990.

Effecive date

The tax on imported chemical derivatives is effective on January 1, 1987.

Senate Amendment

No provision.

Conference Agreement

The conference agreement generally follows the House bill with an amendment.

Under the conference agreement, the amount of tax imposed on a listed imported chemical derivative is the amount of tax which would have been imposed by the feedstocks tax on the taxable chemicals used as materials (and not process fuel) if such taxable chemicals had been sold in the United States for an equivalent use.

If the importer does not furnish sufficient information (at such time and manner as the Secretary may require) the amount of tax is 5 percent of the customs value of the imported chemical derivative.

Under the conference agreement, a chemical derivative must be listed by the Secretary of the Treasury in order to be subject to this tax.

An initial list of taxable substances is specified in the statute. This initial list includes the 47 chemical derivatives in the House bill, as well as acrylonitrile and methanol. The Secretary may delist substances (including statutorily listed substances) as necessary to carry out the purposes of the tax; however, acrylonitrile may not be delisted.

In addition, the Secretary is to add chemical derivatives to this list if taxable feedstocks (under sec. 4661) comprise over 50 percent of the molecular weight of the raw materials used to produce the chemical derivative. The Secretary is to make this determination on the basis of the predominant method of production (with respect to imported derivatives) using stoichiometric material consumption assuming a 100-percent yield.

The Secretary may also add a chemical derivative to the list if taxable feedstocks comprise over 50 percent of the value of the raw materials used to produce the chemical derivative.

The provision is effective for imports of chemical derivatives on or after January 1, 1989.

The conference agreement also provides that the Secretary shall conduct a study of issues related to the implementation of the tax on imported chemical derivatives and the credit allowable for taxable feedstocks used in the production of exported chemical derivatives. This study is to be done after consultation with both the Administrator of the Environmental Protection Agency and the International Trade Commission. The report of the study is to be submitted to the House Committee on Ways and Means the Senate Committee on Finance no later than January 1, 1988.

5. WASTE MANAGEMENT TAX

Present Law

No provision. (A dry-weight tax on hazardous waste was imposed for purposes of funding the Post-closure Liability Trust Fund, discussed in A.7., below; the authority to collect this tax expired on September 30, 1985.)

House Bill

Imposition of tax

Under the House bill, an excise tax is imposed on the disposal, treatment or export of hazardous waste. A "back-up" tax, discussed below, is also imposed on hazardous waste that is not otherwise the subject of a taxable event within 270 days of generation, and that is not exempt from the waste management tax.

The tax is imposed on (1) the receipt of hazardous waste at a qualified hazardous waste management unit, (2) the receipt of hazardous waste for transport from the United States for the purpose of ocean disposal, and (3) the export of hazardous waste from the United States. A "qualified hazardous waste management unit" means the specified area of land or structure which isolates hazardous wastes within a qualified hazardous waste management facility, and which is subject to interim status or final permit requirements under subtitle C of the Solid Waste Disposal Act. A "qualified hazardous waste management facility" means any facility (as defined under subtitle C of the Solid Waste Disposal Act) which has received a permit or interim status under section 3005(c) of the Solid Waste Disposal Act or an authorized State program.

Hazardous waste is defined as any waste which is listed or identified under section 3001 of the Solid Waste Disposal Act as of the date on enactment, and which is not subsequently delisted. Thus, wastes the regulation of which has been suspended under present law (e.g., certain mining wastes) are not subject to the tax.

Tax rates

Under the House bill, the amount of tax imposed per ton of hazardous waste (on a wet-weight basis) is determined in accordance with the following table:

If the taxable event is:

	Land disposal (tax per ton)	Any other taxable event
For calendar year:		
1986	$37	$4.15
1987	39	4.15
1988	42	4.15
1989	44	4.15
1990	47	4.15

The land disposal rate applies to hazardous waste received at a landfill, surface impoundment, waste pile, or land treatment unit, each as defined by EPA pursuant to sections 3004 and 3005 of the Solid Waste Disposal Act. The land disposal rate does not apply to surface impoundments which are part of waste water treatment systems or of deep well injection units.

The lower (i.e., $4.15 per ton) tax rate applies to all other taxable events, including (1) ocean disposal of hazardous waste, (2) export of hazardous waste, and (3) receipt of hazardous waste at other qualified hazardous management units (i.e., other than for land disposal) including deep well injection facilities. For this purpose, deep well injection facilities include any containers, tanks, or surface impoundments principally used to treat or store hazardous waste before underground injection.

Exemptions and credits

Waste water treatment.—Hazardous waste received at a waste water treatment unit is exempt from tax unless a corrective action order remains uncompleted with respect to the facility. A waste water treatment unit is any qualified hazardous waste management unit which is an integral and necessary part of a waste water treatment system, other than a unit which receives concentrated treatment residues for storage or final disposition.

The exemption for waste water treatment units is not allowed with respect to any activity conducted at a facility (or part thereof) while a required corrective action remains uncompleted with respect to such facility (or part of such facility). If a corrective action is uncompleted, tax is imposed at a rate of 15 cents per ton on waste received at the waste water treatment unit.

Incineration.—A credit or refund of tax (without interest) is provided for waste that is incinerated on land (or the equivalent of inceration on land) within 90 days after the date on which such waste is first received at a qualified hazardous waste management unit.

Qualified chemical fuels or solvents.—A credit or refund is provided (without interest) for tax imposed on waste used in the production of any qualified chemical fuel or solvent for use in any commercial or industrial application. A qualified chemical fuel or solvent is any chemical fuel or solvent determined by the Administration not to be hazardous.

Recycling of batteries.—A credit or refund (without interest) is provided for tax paid on the receipt of a battery at a qualified hazardous waste management unit if recycling of such battery commences within 90 days of receipt.

Corrective and remedial actions.—Exemptions are provided in the following cases:

(1) receipt or export of hazardous waste pursuant to corrective actions required by an order or permit issued by the EPA Administrator under the Solid Waste Disposal Act (or by a State under an authorized program);

(2) receipt or export of hazardous waste pursuant to a proposed or final closure plan approved by the Administrator or an authorized State;

(3) receipt or export of hazardous waste pursuant to a removal or remedial action under CERCLA, if the response action has been selected or approved by the EPA Administrator; or

(4) receipt or export of hazardous waste pursuant to an action to correct an emergency situation arising from a product spill which is certified by the Administrator to the Secretary as carrying out the purposes of CERCLA.

Federally-owned facilities.—Hazardous waste received at a federally owned facility is not subject to the tax.

Payment of tax.—The waste management tax is payable by (1) the owner or operator of a qualified hazardous waste management unit; (2) in the case of ocean disposal, the owner or operator of the vessel or aircraft engaged in ocean disposal; or (3) in the case of export, the exporter of hazardous waste.

Termination date

The waste management tax generally expires on September 30, 1990.

Effective date.—The tax is effective with respect to hazardous waste received or exported after December 31, 1985.

"Backup" tax on generation and hazardous waste

A "backup" tax is imposed on hazardous waste which 270 days after generation has not been (1) received at a qualified hazardous waste management unit, (2) received for transport from the United States for the purpose of ocean disposal, or (3) exported from the United States. The generator of the waste is liable for the tax.

The backup tax is imposed at the rate applicable for land disposal. However, the Treasury Department may prescribe regulations which provide exemptions from the backup tax (or a reduced rate) as may be consistent with the purposes of the backup tax.

The backup tax does not apply to waste generated after September 30, 1990.

Effective date.—The backup tax is effective with respect to hazardous waste generated after December 31, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

6. ENVIRONMENTAL TAX

Present Law

Alternative minimum taxable income

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),[7] as passed by the House on September 25, 1986, and the Senate on September 27, 1986, an alternative minimum tax is imposed on corporations. The tax rate is 20 percent, and there is a $40,000 exemption amount (phased out at the rate of 25 cents on the dollar for alternative minimum taxable income in excess of $150,000).

The items of tax preference include accelerated depreciation in excess of the alternative depreciation system for property (other than transitional property) placed in service after 1986; intangible drilling costs (with an offset for 65 percent of net oil and gas income); percentage depletion (in excess of the adjusted basis of the property); bad debt reserve deductions for financial institutions; use of the completed contract method of accounting and of the installment method; capital construction funds for shipping companies; 60-month amortization of certified pollution control facilities; and mining exploration and development costs. Tax-exempt interest on newly issued private activity bonds (but not qualified 501(c)(3) bonds), and untaxed appreciation on charitable contributions of appreciated property, also are preference items.

For 1987 through 1989, one-half of the excess of pre-tax book income of the taxpayer (including members of a group filing a consolidated tax return for the year), over other alternative minimum taxable income, is a preference. After 1989, pre-tax book income is replaced for this purpose by adjusted current earnings.

These provisions apply generally to taxable years beginning after December 31, 1986. The treatment of interest on private activity bonds as a preference item applies to bonds issued after August 7, 1986, except that in the case of certain bonds treated as governmental under prior law, such treatment applies to bonds issued on or after September 1, 1986.

Manufacturer's excise tax

Present law imposes selective excise taxes on the sale by the manufacturer of tires, petroleum products, coal, and certain recreational equipment.

House Bill

No provision.

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[7] See H. Rep. 99-841, September 18, 1986.

Senate Amendment

Imposition of tax

The Senate amendment imposes an excise tax on the sale, lease, or transfer of tangible personal property by the manufacturer of the property, in connection with a trade or business (Superfund Excise Tax). Revenues equivalent to the tax are to be deposited in the Superfund.

The tax is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). Tax is also imposed (at the same 0.08-percent rate) on importers of tangible personal property based on the customs value plus duties (or, if no customs value is available, the fair market value) of the imported property.

For purposes of the tax, "manufacturing" includes mining, raw material production, and the production of tangible personal property. Manufacturing does not include services incidental to storage or transportation of property; preparation of food in a restaurant or other retail establishment; or incidental preparation of property by a wholesaler or retailer. "Tangible personal property" includes natural gas and other gaseous products and materials. Tangible personal property does not include electricity, unprocessed agricultural products, or unprocessed food products.

The tax is deductible from Federal income taxes.

Credit against tax

A credit equal to 0.08 percent of the taxpayer's qualified inventory costs is allowed against the tax.

"Qualified inventory costs" are amounts paid or incurred for purchases of tangible personal property and which are allocable to the inventory of a manufacturer using the full absorption accounting method (unless otherwise provided in regulations). Property manufactured for lease is treated in the same manner as property manufactured for sale.

In lieu of any allowance for depreciation or amortization, qualified inventory costs include amounts paid or incurred for depreciable or amortizable property (i.e., expensing treatment).

A taxpayer who includes the cost of tangible personal property in qualified inventory costs is treated as the manufacturer of the property if the property is subsequently sold or leased.

Credits may be carried forward to later taxable years, but may not be refunded.

Exemptions

Small manufacturers.—A manufacturer with $5 million or less of annual taxable receipts is effectively exempt from the tax, by means of a minimum $4,000 allowable credit. This minimum credit is not available to importers, is not refundable, and may not be carried over.

Small imports, exports, and tax-exempt entities.—Additional exemptions from the tax are provided for the following: (1) import shipments with an aggregate value of $10,000 or less; (2) exports from the United States, and (3) items sold or leased (but not imported) by governmental units or organizations exempt from taxation under section 501(a) (other than in unrelated trades or businesses).

Termination date

The tax terminates after December 31, 1990. The tax would be suspended or terminated earlier under similar conditions as the petroleum and feedstock chemical taxes (see A.2 and A.3., above).

Effective date

The tax is effective on January 1, 1986.

Conference Agreement

The conference agreement provides a new environmental tax generally based on corporate alternative minimum taxable income ("AMTI"). AMTI is defined in the same manner as in the Tax Reform Act of 1986 (H.R. 3838), which the conferees expect will be signed into law before the effective date of this provision.

The amount of tax is equal to 0.12 percent ($12 of tax per $10,000 of AMTI) of the excess of AMTI, without regard to net operating losses and the deduction for this tax, over $2 million. The $2 million exemption is aggregated for taxpayers that are component members of a controlled group of corporations (as defined in sec. 1563). The environmental tax is imposed whether or not the taxpayer is subject to the alternative minimum tax. The environmental tax is deductible from gross income. No credits are allowable against the environmental tax. In addition, the rules for estimated tax, penalties, and refunds that apply to the corporate income tax also apply to the environmental tax.

The environmental tax is effective for taxable years beginning after December 31, 1986. The environmental tax is not imposed if any taxable year beginning during a calendar year in which the petroleum and chemical feedstocks taxes are not imposed. Thus, the environmental tax is not imposed in taxable years beginning after December 31, 1991, and will be terminated (or suspended) sooner if the petroleum and chemical feedstocks taxes are terminated (or suspended) before this date. The effective date and termination provisions are designed to impose the environmental tax for the same number of taxable years, regardless of when a corporation's taxable year begins. Rules for the imposition of the environmental tax for taxable years of less than 12 months shall be prescribed by the Secretary.

7. LEAKING UNDERGROUND STORAGE TANK TRUST FUND AND TAX

Present Law

Petroleum releases and releases of natural or synthetic gases are not covered by the Superfund. (Some petroleum releases are specifically covered by other environmental laws.)

Excise taxes are imposed on gasoline and special motor fuels (9 cents per gallon), diesel fuel (15 cents per gallon), aviation gasoline (12 cents per gallon), aviation jet fuel (14 cents per gallon), and fuel used on inland waterways (10 cents per gallon). Revenues from these fuel taxes are dedicated to specific trust funds.

House Bill

Establishment of trust fund

A separate Leaking Underground Storage Tank Trust Fund is established, to be available for cleanup and related costs associated with leaking underground storage tanks containing petroleum products.

This Trust Fund generally is intended to be used to pay cleanup and releated costs involving tanks where no solvent owner can be found, or when the owner or operator refuses or is unable to comply with an urgent corrective order. This Trust Fund would also be available to provide grants to States carrying out these purposes.

Financing of trust fund

The Leaking Underground Storage Tank Trust Fund is to be funded by:

(1) An additional 0.2-cent per gallon tax on gasoline, diesel fuel, and special motor fuels sold by a producer or importer; liquid fuels (other than gasoline) used in motor vehicles, motor boats, and trains; liquid aviation fuels; and fuels used in commercial transportation on inland waterways. These additional taxes generally use the tax base and collection procedures of the present-law excise taxes on these fuels (Code secs. 4041, 4042, and 4081).

(2) Interest on balances in this Trust Fund.

(3) Recoveries from responsible parties under section 9003(h) of the Solid Waste Disposal Act.

Termination of tax

The additional taxes expire on September 30, 1990. However, no further taxes are to be imposed if, before September 30, 1990, cumulative revenues from these taxes exceed $850 million.

Effective date

These provisions are effective on November 1, 1985.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill in establishing a Leaking Underground Storage Tank Trust Fund. The conference agreement also follows the House bill as to the financing of the Trust Fund, except that the tax is imposed at the rate of 0.1 cent per gallon. This tax is not imposed on liquified petroleum gas. A reduced rate of 0.05 cent per gallon is imposed on methanol.

This provision is effective on January 1, 1987. It expires on December 31, 1991. If, prior to the date, the net revenues from the taxes impose to fund the Leaking Underground Storage Tank Trust Fund exceed $500 million, than those taxes will expire on the last day of the month in which that occurs.

B. POST-CLOSURE LIABILITY TRUST FUND AND TAX

Present Law

A separate trust fund, the Post-Closure Liability Trust Fund, is to assume completely the liability of owners and operators of hazardous waste disposal facilities that have been granted permits and have been properly closed under Subtitle C of the Resource Conservation and Recovery Act. (RCRA). The Trust Fund also may be used to pay certain monitoring and maintenance costs.

Revenues from an excise tax on hazarsous waste were deposited in the Trust Fund. The tax of $2.13 per dry weight ton expired on September 30, 1985.

House Bill

The House bill repeals the Post-Closure Liability Trust Fund and tax, effective October 1, 1983 (the original effective date of the tax). To effect this retroactive repeal, taxpayers who paid this tax may file claims for refunds of the tax, plus interest.

Senate Amendment

The Senate amendment repeals the Post Closure Liability Trust Fund and tax effective October 1, 1985, and transfers the unobligated balance in this Trust Fund to the Superfund. Amounts in the Trust Fund are to be refunded (proportionately to taxes paid, but without interest) effective March 1, 1989, unless by that date the Congress authorizes a transfer or assumption of post-closure liability in response to a study required to be made by EPA.

Conference Agreement

The conference agreement follows the House bill. The statute of limitations is extended so that taxpayers who paid this tax may file claims for refunds.

C. OIL SPILL LIABILITY TRUST FUND AND TAX

1. OIL SPILL LIABILITY TRUST FUND

Present Law

Funds relating to oil spill damages and cleanups have been created under various Federal statutes, including:

(1) section 311(k) of the Federal Water Pollution Control Act (Clean Water Act) ($35 million revolving fund for oil spill cleanups, supported by fines, penalties, and general revenue appropriations);

(2) the Trans-Alaska Pipeline Authorization Act ($100 million fund, financed primarily by a 5-cents-per-barrel fee on oil passing through the pipeline);

(3) the Deepwater Port Act of 1974 ("Deepwater Port Liability Fund") ($100 million fund, financed by a 2-cents-per-barrel fee on oil loaded at a deepwater port); and

(4) the Outer Continental Shelf Act Amendments of 1978 ("Offshore Oil Pollution Compensation Fund") ($200 million

fund with respect to offshore oil spills, financed by a maximum 3-cents-per-barrel fee on owners of offshore oil).

There is no general oil spill liability and compensation trust fund.

House Bill [8]

In general

An Oil Spill Liability Trust Fund is established in the Treasury, to be funded in part by a 1.3-cents-per-barrel excise tax on domestic crude oil and imported petroleum products.

Amounts in the Oil Spill Fund are available for removal costs, certain damages sustained by U.S. claimants, and certain related costs associated with oil spills. Claimants generally would have the option of proceeding against the responsible party or recovering against the Fund, which could then proceed against the responsible party. The legislation would constitute an exclusive remedy for claims covered by the Fund.

Liability of responsible parties is to be on a strict, joint, and several basis, with liability limits consistent with international agreements.

Excess amounts remaining in the fund created by section 311(k) of the Federal Water Pollution Control Act are transferred to the general fund of the Treasury.

Uses of fund

Amounts in the Oil Spill Fund are available only for the following purposes:

(1) Payment of costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities ("removal costs"), under the Federal Water Pollution Control Act, the Deepwater Port Act, and the Intervention on the High Seas Act.

(2) Claims for injury to, or destruction of, real or personal property.

(3) Claims for loss of subsistence use of natural resources.

(4) Payment of otherwise uncompensated economic loss sustained by any U.S. claimant as a result of oil spills from vessels or offshore facilities. Compensable damages would include lost earnings and profits if: (a) the loss is 25 percent or more of the claimant's earnings; or (b) in the case of seasonal activities, 25 percent of seasonal earnings are derived from affected activities.

(5) Payment of contributions to the International Fund for Compensation for Oil Pollution Damage, if the conventions establishing this fund come into force with respect to the United States. Under regulations, contributions to the International Fund would be allowed only in proportion to the portion of such Fund used for purposes that are consistent with the uses of the domestic Oil Spill Fund.

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[8] Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget on July 31, 1985 (H. Rep. 99-727), and as passed by the House on September 24, 1986.

(6) Administrative costs, but only to the extent necessary for an incidental to the implementation of the Comprehensive Oil Pollution Liability and Compensation Act.

Payments to any governmental unit, under any item above, are permitted only for removal costs and administrative expense related to removal costs.

The liability of the Oil Spill Fund could not exceed $200 million for any single incident. Additionally, no payment could be made (except for removal costs) to the extent that the payment would reduce the Fund balance below $30 million.

Claims against the Fund could be paid out of the Oil Spill Fund only. If the Fund is insufficient to pay all claims, claims are to be paid in full in the order in which finally determined.

Revenue sources

Under the House bill, the following amounts are to be deposited in the Oil Spill Fund:

(1) Amounts equivalent to a 1.3-cent-per-barrel excise tax on domestic crude oil and imported petroleum products, using the tax base for the Superfund petroleum tax (see C.2., above).

(2) Amounts recovered, collected, or received from responsible parties under the Comprehensive Oil Pollution Liability and Compensation Act. (Penalties with respect to payment of taxes would not be deposited in the Oil Spill Fund.)

(3) Amounts remaining in the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund, as of the date of enactment.

(4) Interest earned on Oil Spill Fund investments.

(5) The proceeds of authorized borrowing by the Oil Spill Fund, not to exceed $300 million in outstanding indebtedness at any time.

(6) Penalties and recoveries under the Federal Water Pollution Control Act.

Administrative provisions

The Oil Spill Liability Trust Fund is established as a trust fund in the Internal Revenue Code.

The Trust Fund is authorized to borrow, as repayable advances, up to $300 million at any one time to carry out the purposes of the Fund.

Effective date

The Oil Spill Fund trust fund provisions are effective on January 1, 1986.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision of the House bill.

2. OIL SPILL TAX

Present Law

No provision. (A tax on petroleum was imposed for deposit in the Superfund; see A.2., above.)

House Bill[9]

Imposition of tax

An excise tax of 1.3 cents per barrel is imposed on domestic crude oil and imported petroleum products, in addition to the 11.9-cents-per-barrel tax imposed on this base for the Superfund (see A.2., above). This tax uses the same tax base, and is subject to the same administrative provisions, as the Superfund petroleum tax.

A non-transferable credit against the oil spill tax is allowed (to the extent of prior contributions) for persons who contributed to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund. (The balance in these funds is to be transferred to the Oil Spill Fund.)

Termination of tax

This tax terminates after September 30, 1990.

Effective date

The tax is effective after December 31, 1985.

Senate Amendment

No provision. (The Senate amendment continues the prior-law Superfund petroleum tax.)

Conference Agreement

The conference agreement does not include the provision of the House bill.

D. TAX-EXEMPT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES

Present Law

Tax-exempt industrial development bonds ("IDBs") may be issued to finance solid waste disposal facilities (sec. 103(b)(4)(E)). Facilities for the disposal of liquid or gaseous waste (including liquid and gaseous hazardous wastes) do not qualify for this financing.

Under the conference agreement on the Tax Reform Act of 1986 (H.R. 3838),[10] as passed by the House on September 25, 1986, and the Senate on September 27, 1986, tax-exempt private activity bonds may be issued to finance qualified hazardous waste facilities. These include facilities for the land incineration or the permanent entombment of hazardous waste, which facilities are subject to final permit requirements under subtitle C of Title II of the Solid Waste Disposal Act, as in effect on the date of enactment of the conference agreement. Tax-exempt financing is available under this provision only for facilities (or the portion of a facility) to be used by the general public, and is subject to certain limitations, including the volume and other limitations applicable to private activity bonds generally.

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[9] Similar provisions are included in H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as reported by the House Committee on the Budget, July 31, 1986, and as passed by the House on September 24, 1986.

[10] See H. Rep. 99-841, September 18, 1986.

House Bill

No provision.

Senate Amendment

The Senate amendment allows tax-exempt IDBs to be issued to finance facilities for the treatment of hazardous waste, as these terms are defined under sec. 1004 of the Solid Waste Disposal Act (i.e., RCRA). This exemption is limited to facilities which are subject to final permit requirements under RCRA. Bonds issued under this provision would be subject to the volume and other restrictions applicable to solid waste IDBs under present law.

This provision is effective for bonds issued after the date of enactment.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

E. HAZARDOUS WASTE REMOVAL COSTS TREATED AS QUALIFYING DISTRIBUTIONS BY PRIVATE FOUNDATIONS

Present Law

To avoid penalty excise taxes, a private foundation must annually make expenditures or grants for charitable purposes in an amount (the "distributable amount") equal to 5 percent of the fair market value of its investments (Code sec. 4942).

House Bill

No provision.

Senate Amendment

Subject to certain limitations, the distributable amount of a private foundation (under sec. 4942) is to be reduced by amounts paid or incurred or set aside by the foundation for removal or remedial action with respect to a hazardous substance release at a facility that was owned or operated by the foundation.

This provision is effective for taxable years beginning after December 31, 1982.

Conference Agreement

The conference agreement does not include the provision of the Senate amendment.

F. STUDIES

1. ALTERNATIVE FINANCING MECHANISMS

Present Law

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), EPA prepared the following study: "The Feasibility and Desirability of Alternative Tax Systems for Superfund: CERCLA section 301(a)(1)(G) Study," United States Environmental Protection Agency (December 1984).

House Bill

No provision.

Senate Amendment

The General Accounting Office (GAO) is directed to report by January 1, 1988, its findings on various mechanisms for financing the Superfund, including a study on the effect of a tax on hazardous waste on the generation and disposal of such waste.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. EFFECT OF WASTE MANAGEMENT TAX

Present Law

No provision.

House Bill

The Secretary of the Treasury is directed to study the effects of the waste management tax on the ability of domestic manufacturers to compete in international trade, and to report to Congress by July 1, 1986.

Senate Bill

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill

3. STUDY OF LEAD POISONING

Present Law

No provision.

House Bill

The House bill directs the Administrator of the Agency for Toxic Substances and Disease Registry to study the nature and extent of lead poisoning in children from environmental sources, and to report to Congress by March 1, 1986. The cost of this study is authorized to be paid out of the Superfund.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

G. APPENDICES

APPENDIX A.—EXCISE TAX RATES ON FEEDSTOCK CHEMICALS UNDER PRIOR LAW AND HOUSE BILL

Substance	Prior law rate	House bill proposed fiscal year 1986 rate [1]
Organic substances:		
Acetylene	4.87	6.25
Benzene [2]	4.87	6.25
Butadiene	4.87	6.25
Butane	4.87	5.54
Butylene	4.87	6.25
Ethylene	4.87	6.25
Methane	3.44	3.44
Naphthalene [2]	4.87	6.25
Propylene	4.87	6.25
Toluene [2]	4.87	6.25
Xylene [2]	4.87	[3] 11.19
Inorganic substances:		
Ammonia	2.64	4.20
Antimony	4.45	6.25
Antimony trioxide	3.75	6.25
Arsenic	4.45	6.25
Arsenic trioxide	3.41	6.25
Barium sulfide	2.30	6.25
Bromine	4.45	6.25
Cadmium	4.45	6.25
Chlorine	2.70	4.03
Chromite	1.52	1.52
Chromium	4.45	6.25
Cobalt	4.45	6.25
Cupric oxide	3.59	6.25
Cupric sulfate	1.87	6.25
Cuprous oxide	3.97	6.25
Hydrochloric acid	.29	1.24
Hydrogen fluoride	4.23	6.25
Lead	0	6.25
Lead oxide	4.14	6.25
Mercury	4.45	6.25
Nickel	4.45	6.25
Nitric acid	.24	3.90
Phosphorus	4.45	6.25
Potassium dichromate	1.69	6.25
Potassium hydroxide	.22	6.25
Sodium dichromate	1.87	6.25
Sodium hydroxide	.28	3.72

APPENDIX A.—EXCISE TAX RATES ON FEEDSTOCK CHEMICALS UNDER PRIOR LAW AND HOUSE BILL—Continued

Substance	Prior law rate	House bill proposed fiscal year 1986 rate [1]
Stannic chloride	2.12	6.25
Stannous chloride	2.85	6.25
Sulfuric acid	.26	1.03
Zinc chloride	2.22	6.25
Zinc sulfate	1.90	6.25

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[1] Proposed rates would be indexed for inflation, beginning in 1987, but would not be reduced below the rates stated in the table.

[2] Coal-derived benzene, naphthalene, toluene, and xylene are exempt under current law. These substances would be taxed at the indicated rates under the bill.

[3] Tax rate on xylene reflects increase to compensate for repeal of tax prior to 1986.

APPENDIX B: INITIAL LIST OF TAXABLE SUBSTANCES FOR PURPOSES OF IMPORTED DERIVATIVES TAX UNDER HOUSE BILL

Cumene; Styrene; Ammonium nitrate; Nickel oxide; Isopropyl alcohol; Ethylene glycol; Vinyl chloride; Polyethylene resins, total; Polybutadiene; Styrene-butadiene, latex; Styrene-butadiene, snpf; Synthetic rubber, not containing fillers; Urea; Ferronickel; Ferrochromium nov 3 pct; Ferrochrome ov 3 pct carbon; Unwrought nickel; and Nickel waste and scrap.

Wrought nickel rods and wire; Nickel powders; Phenolic resins; Polyvinylchloride resins; Polystyrene resins and copolymers; Ethyl alcohol for nonbeverage use; Methylene chloride; Polypropylene; Propylene glycol; Formaldehyde; Acetone; Propylene oxide; Polypropylene resins; Ethylene oxide; Ethylene dichloride; Cyclohexane; Isophthalic acid; and Maleic anhydride.

Phthalic anhydride; Ethyl methyl ketone; Chloroform; Carbon tetrachloride; Chromic acid; Hydrogen peroxide; Polystyrene homopolymer resins; Melamine; Acrylic and methacrylc acid resins; Vinyl resins; and Vinyl resins, NSPF.

ESTIMATED REVENUE EFFECTS OF H.R. 2005, AS APPROVED BY THE CONFERENCE COMMITTEE, FISCAL YEARS 1987–92

[In millions of dollars]

Tax provision	1987	1988	1989	1990	1991	1992	Total
Superfund taxes:							
Petroleum tax	379	547	551	554	557	171	2,759
Chemical feedstocks tax	91	280	291	299	309	95	1,365
Environmental tax	218	418	487	528	573	298	2,522
Tax on imported chemical derivatives			13	19	19	6	57
Total, Superfund tax receipts	688	1,245	1,342	1,400	1,458	570	6,703
Leaking underground storage tank trust fund tax on gasoline, other motor fuels (0.1 cents per gal.)	89	130	132	131	18	....	500
Total, tax revenues to trust funds	777	1,375	1,474	1,531	1,476	570	7,203
Net increase in budget receipts (after income tax offsets)	583	1,031	1,106	1,148	1,107	428	5,403

From the Committee on Energy and Commerce for consideration of titles I–III of the House amendment to the Senate amendment, and the entire Senate amendment, except for title II:

JOHN D. DINGELL.
JAMES J. FLORIO.
DENNIS E. ECKART.
RALPH M. HALL.
BILLY TAUZIN.
AL SWIFT.

From the Committee on Energy and Commerce:

Solely for sections 102, 103, 105, 111, 113, 115, 117, 120, 121, 122, 123, 124, and 127 of title I and title III of the House amendment to the Senate amendment, and modifications committed to conference including section 157 of the Senate amendment:

RON WYDEN.

Solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

THOMAS J. TAUKE.
NORMAN F. LENT.
DON RITTER.

From the Committee on Energy and Commerce solely for sections 101, 104, 106, 107, 108, 109, 110, 112, 114, 116, 118, 119, 125, and 126 of title I and title II of the House amendment to the Senate amendment, and modifications committed to conference:

JACK FIELDS.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

JAMES J. HOWARD.
GLENN M. ANDERSON.
ROBERT A. ROE.
JOHN BREAUX.
NORMAN MINETA.
BOB EDGAR.
GENE SNYDER.

From the Committee on Public Works and Transportation for consideration of titles I, II (except for section 205) and IV of the House amendment to the Senate amendment, and title I of the Senate amendment, except for sections 110, 111, 127, 157, and 160 thereof:

ARLAN STANGELAND.
NEWT GINGRICH.

From the Committee on Public Works and Transportation for consideration of title III of the House amendment to the Senate amendment, and sections 110, 111, 127, and 160 of title I of the Senate amendment:

ROBERT A. ROE.
BOB EDGAR.
ARLAN STANGELAND.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

DAN ROSTENKOWSKI.
J.J. PICKLE.
C.B. RANGEL.
PETE STARK.
THOMAS J. DOWNEY.
MARTY RUSSO.
DONALD J. PEASE.

From the Committee on Ways and Means for consideration of title V of the House amendment to the Senate amendment, and title II of the Senate amendment:

GUY VANDER JAGT.
BILL FRENZEL.

From the Committee on Merchant Marine and Fisheries for consideration of sections 104, 107, 108, 111, 113, 116, 121, 122, and 127 of title I of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BOB DAVIS.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

WALTER B. JONES.
MARIO BIAGGI.
GERRY E. STUDDS.
BARBARA A. MIKULSKI.
MIKE LOWRY.
BILLY TAUZIN.

From the Committee on Merchant Marine and Fisheries for consideration of title IV of the House amendment to the Senate amendment, and modifications committed to conference:

BOB DAVIS.
NORMAN F. LENT.

From the Committee on the Judiciary for consideration of sections 107, 113, 117, 119, and 122 of title I and sections 203 and 206 of title II of the House amendment to the Senate amendment, and modifications committed to conference:

PETER W. RODINO.
DAN GLICKMAN.
HAMILTON FISH, Jr.
THOMAS N. KINDNESS.

From the Committee on Armed Services for consideration of section 213 of title II of the House amendment to the Senate amendment, and section 162 of title I of the Senate amendment:

DAVE MCCURDY,
DAVID O'B. MARTIN,
Managers on the Part of the House.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

ROBERT T. STAFFORD.
JOHN H. CHAFEE.
ALAN K. SIMPSON.
GORDON J. HUMPHREY.
PETE V. DOMENICI.
DAVID DURENBERGER.
LLOYD BENTSEN.

From the Committee on Environment and Public Works for the purpose of considering all matter other than that contained in title II of the Senate amendments, and section 463 of title IV and title V of the House amendments:

DANIEL PATRICK MOYNIHAN.
GEORGE MITCHELL.
MAX BAUCUS.
FRANK R. LAUTENBERG.

From the Committee on Finance for the purpose of considering section 463 of title IV and title V of the House amendments, and title II of the Senate amendments:

BOB PACKWOOD.
BOB DOLE.
WILLIAM V. ROTH, Jr.
RUSSELL B. LONG.
LLOYD BENTSEN.

From the Committee on the Judiciary for the purpose of joining in the consideration of sections 135, 143, 144, and to the extent it may affect the Federal courts or relate to claims against the United States, section 150, together with such amendments related directly thereto as may have been adopted by the House:

STROM THURMOND,
ARLEN SPECTER,
EDWARD M. KENNEDY,
Managers on the Part of the Senate.

○

[From the Congressional Record, Oct. 3, 1986, pp. S14895-S14938, S14943]

SUPERFUND AMENDMENT AND REAUTHORIZATION ACT—CONFERENCE REPORT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now proceed to the conference report to accompany H.R. 2005 Superfund, that it be considered under the following time limit: 30 minutes on the conference report to be equally divided—it does not all have to be used—between the chairman of the Committee on Environment and Public Works, Mr. Stafford, and the ranking minority member, Mr. Bentsen, and in addition to the Senators from Oregon, Senator Packwood, and the Senator from Louisiana, Mr. Long, but the Senator from Texas and the Senator from Vermont would be in charge of the time; following conclusion or yielding on the debate itself, that the yeas and nays be ordered, and that the vote occur immediately following final passage of the continuing resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I submit a report of the committee of conference on H.R. 2005 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, have met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report will be printed in the House proceedings of the Record of October 3, 1986.)

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, the vote will now occur on the Superfund conference report immediately following the vote on the continuing resolution.

The PRESIDING OFFICER. That is correct.

Mr. STAFFORD. Mr. President, as chairman of the Committee on Environment and Public Works, I can say that there were times in the long and difficult period when we were developing the Superfund legislation, which is now before us, there were times when we were getting it through the Senate and especially there were times in the long and difficult committee of conference between the House and the Senate that it seemed to me we might not achieve what we finally have.

So I am particularly gratified and in fact elated that we have finally brought a conference report signed as far as I know by all of the conferees for the Senate before this body this afternoon.

At this point I am very happy this is a good bill and will naturally expand our efforts to clean up hazardous waste sites around this country. It will not add to the national deficit or debt because it will be a self-sustaining fund for the most part.

AN EXPLANATION OF SOME PROVISIONS

Mr. President, I am gratified that the Senate is finally able to turn to this legislation. At this point, we cannot be sure whether this or any other provision related to Superfund will become law during this Congress. For the sake of the hundreds who have worked on this legislation, and the millions who are to protected, I hope it will be enacted. But, in all honesty, that it merely hope at this point.

Should this bill be taken up and become law, some of its provisions require further clarification. The purpose of this statement is to, at least hopefully, provide some of that clarification. While this Senator was only one member of the Conference Committee, he faithfully attended all of the Conference Committee meetings and all but one of the so-called subgroup meetings. I do not believe any other member of the conference can make this statement.

Based on my participation in all of those many meetings, accumulating untold hours, I would like to explain some of bill's provisions.

SECTION 104 (B) & (E)—REMOVALS

Under the current Superfund program, responses are divided into two separate categories: short-term removal actions and long-term, permanent remedial actions. The basic distinctions between the two categories are time and money. Removal actions under current law generally last less than 6 months or cost less than $1 million, unless the President finds that more of either is necessary to mitigate an emergency. Remedial actions, on the other hand, are taken at national priorities list sites and can involve years of work and tons of millions of dollars in cleanup costs.

During the reauthorization process, the administration requested that the limits on removal actions be relaxed from 6 to 12 and from $1 million to $2 million. This is to increase flexibility in conducting short-term responses because often they become more expensive then originally anticipated. The bill makes this change, and also adds a new criterion for exceeding these limits—that is whether "continued response action is otherwise appropriate and consistent with the remedial action to be taken."

There are two important ramifications of labeling a cleanup as a removal and not a remedial action. The standards and procedures of section 117—regarding public participation—and section 121—regarding cleanup standards—apply only to remedial actions. The rationale for this selective application is that short-term, relatively low-cost activities of great urgency should be free of the delays attendant to the requirements of sections 117 and 121.

In granting the flexibility to apply increased limits in structuring emergency removals, and granting exceptions even to those limits in unusual cases, we do not intend to encourage any shift in the focus of the program toward such activities. Removals should remain interim and relatively short-term and inexpensive actions or urgent responses which consume a small portion of Superfund resources. The new, more flexible authority is not to be abused to circumvent the more rigorous and explicit requirements regarding public participation and health standards. Finally, while the President is accorded greater flexibility in undertaking removals, the law's fundamental requirement that human health and the environment be protected must nonetheless be satisfied. The flexibility is merely procedural in nature, not substantive.

SECTION 105/SITE ID AND NATIONAL CONTINGENCY PLAN REVISION

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 requires all past and present owners, as well as, operators and transporters of hazardous substance facilities to notify the Administrator of the Environmental Protection Agency [EPA] regarding the existence of such facilities. Penalties are imposed for failure to comply with these requirements. The administration enlisted the States to assist in the site identification effort. At the end of the first 5 years of the program, it was estimated that some 25,000 sites would be identified nationwide; about 20,000 sites were included on comprehensive environmental response, compensation and liability information system [CERCLIS], the computerized data base used to store information on all known hazardous substance facilities.

Although the CERCLIS list is asserted to represent a comprehensive inventory of all known sites, the General Accounting Office [GAO] has reported that the potential universe of Superfund sites in fact could be much larger then previously acknowledged, and could include some 378,000 facilities. The GAO report concluded that relatively little emphasis has been given to site discovery. Aside from the initial effort in 1982 which uncovered most of the sites on the current inventory, the Federal Government has relied primarily on local governments and the public to discover new sites. It has not conducted any other systematic discovery effort. According to the GAO report, the Environmental Protection Agency has acknowleged that a targeted, systematic discovery effort combined with a change in program emphasis toward cleaning up sites that have not yet received sufficient attention, could increase the number of sites well beyond the 25,000 figure. For example, the Environmental Protection Agency acknowledged in the report that there are some 34,000 to 52,000 municipal landfills and some

9,770 to 63,770 mining waste sites not yet been listed or evaluated under the Superfund Program.

The Congress places the highest priority on improvement of site identification efforts. No changes in current law are made by the legislation regarding the site identification effort because such changes are unnecessary. CERCLA contains both the authority and the mandate to improve efforts in this area. The conference report accompanying SARA expresses the congressional expectation that between 1,600 and 2,000 sites will be placed on the national priorities list by 1988. An improved site identification effort is the logical corollary to this goal.

This bill does allow for changes in the process for evaluating Superfund facilities once they are identified. These changes, contained in section 105 of the legislation, require EPA to reassess the hazard ranking system [HRS] in order to address several problems brought to the Congress's attention during the reauthorization process. These problems include:

The current HRS, known commonly as the "Mitre Model" does not include a factor evaluating potential or actual contamination of the human food chain by releases of hazardous substances. Such contamination can pose a greater threat to human health than virtually any other type of contamination, other than contamination of household water supplies. When revising the system to take such contamination into effect, EPA should also consider food chain contamination that has an adverse impact on other aspects of the environment, including contamination of wildlife food chains.

The current "Mitre Model" also contains an anomaly in its treatment of air emissions from Superfund sites. If and when actual measurements of such emissions exists, the model scores them as a threat to human health, but if no measurements happen to have been made of such emissions, the model ignores them in its ranking of the actual or potential hazards posed by the site. Any revisions are to address this problem.

The current model also fails to adequately address contamination of surface water by point and nonpoint sources. The legislation requires that the HRS must be revised to consider human health risks associated with actual or potential contamination of surface water used for recreation or potable water consumption from such sources. In undertaking this revision, the legislation explicitly directs the President to consider possible downstream contamination of drinking water supplies.

The revisions in the HRS required by the legislation reflect one major theme which will become increasingly important during the next 5 years of the program: how to define the parameters of a Superfund site geographically on the basis of suitably comprehensive information regarding the nature of actual or potential contamination at the facility.

During the first 5 years of the program, EPA has in some cases defined sites broadly, to cover large geographical areas, and in other cases defined sites narrowly, to exclude potential downstream on offsite contamination. The problem with defining sites too broadly is that data regarding the sources of contamination at such large facilities often become confused, leading to disputes over whether operating industrial plants are causing the contamination. The problem with defining sites to narrowly is that a subsequent cleanup could ignore contamination that has spread beyond the boundaries of the facility.

In grappling with these admittedly difficult issues, the President should err in the direction which assures all actual and potential hazards are addressed. Aggressive and complete use of Superfund enforcement authorities would ensure that the Federal fund does not subsidize cleanup costs created by viable industrial entities. Releases under media-specific laws—for example the Clean Water Act—are also subject to CERCLA requirements. If the imposition of civil or criminal penalties, issuance of section 106 orders, application of section 121 standards or utilization of any other CERCLA or SARA authority would make for better or faster cleanups, then such provisions should be used.

SECTION 110—HEALTH STUDIES

One of the most significant but, remarkably, least controversial of the provisions in this bill is an elaboration of the health authorities contained in section 104(i) of existing law.

In addition to making the authorities of existing law somewhat more precise, the bill imposes some explicit requirements on the Administrator for the Agency for Toxic Substances and Disease Registry [ATSDR]. To assure that all of these authorities, old as well as new, are implemented at least minimally, this bill requires the Agency to be provided directly with not less than $50 million per year. This funding is in addition to any sums required for site-specific responses and is to be provided directly to ATSDR. It is not to be submitted to or through the Environmental Protection Agency, nor is it subject to any controls whatsoever by that Agency or its officials. ATSDR is independent of and coequal to EPA. The Administrator of ATSDR may consult with the Administrator of EPA where, in the judgment of the former, such consultation is appropriate or required by law. But the minimum sum provided by this bill to ATSDR is for implementation of that Agency's own authorities under Superfund, which are different in character from those of EPA.

Direct funding is required because of the demonstrated hostility towards ATSDR which exists in the executive branch. Indeed, the Agency was created only after a law suit was filed to enforce the requirements of 104(i). Even after the Agency was created, budget requests were reduced time after time prior to submission to the Congress. In each year, the Congress was forced to increase the budget request and instructed that the appropriation be provided directly to ATSDR.

The most important of the nondiscretionary duties imposed on ATSDR—in consultation with the Environmental Protection Agency—are the requirements that toxicological profiles be prepared for the hazardous substances found most frequently at Superfund sites and that health assessment studies be conducted at all sites on the national priorities list. The legislation establishes deadlines for these requirements, and any failure to meet a deadline would be subject to immediate citizens' suits under section 310 of the act.

In preparing toxicological profiles and health assessments the agencies should accumulate as much information as possible within the mandated timeframes, issue the profile or assessment on schedule, and then update or revise it as necessary. Supplemental requirements of the legislation—for example, peer review—excuses delay or deadline noncompliance issuance of the information required within the timeframes required.

The elements of a health assessment include: first, information necessary to ascertain the magnitude, scope and duration of the exposure of individuals to the hazardous substance or substances at issue, including the source and degree of ground or surface water contamination, air emissions and food chain contamination; second, an identification of all those in the community who might be exposed to the release of hazardous substances; third, toxicological and epidemiological evaluations of the impact of the exposure on affected individuals; and fourth, any other necessary medical testing of individuals.

This is not an exhaustive or exclusive list and ATSDR and EPA should explore additional areas and gather more information where appropriate. The agencies retain the flexibility to exceed the basic requirements of the bill in developing useful and complete health assessments. However, compliance with the minimal requirements and deadlines is nondiscretionary and thus enforceable through the citizens' suits provisions.

If a health assessment indicates that there is a significant risk to human health, the President is required to take such steps as are necessary to eliminate or substantially mitigate such risk. The risks contemplated by this provision include both actual and potential, acute and chronic health effects. The steps which must be taken to eliminate or prevent such risks include, but are not limited to, the provision of alternative drinking water supplies or the temporary or permanent relocation of individuals. The President has the flexibility to take whatever action may be necessary to eliminate or prevent the risk as quickly as possible. In many instances, provision of alternative household water supplies may be the most effective solution, but in some circumstances, relocation may be the only effective alternative. In addition to the steps specified, other actions—such as the decontamination of soil—may prove most effective in fulfilling the primary goal of eliminating significant risk.

In the context of considering what steps to take to eliminate or prevent actual or potential adverse health effects, the legislation permits ATSDR to consider additional information on the risks to the potentially affected population from all sources of hazardous substances, including known point or nonpoint sources other than the facility in question. The purpose of this authority is to enable the Agency to fully evaluate the most effective steps to eliminate or prevent adverse health effects. If contamination arises from other sources, in addition to those studied in the assessment, ATSDR or EPA may need to take steps under other provisions of law to deal with such contamination. The provision does not require a comparative risk assessment nor it it a reason to preclude or delay action while any or all other sources of contamination are studied.

Similarly, the legislation requires that whenever ATSDR determines to conduct a full scale or other study of health effects for selected groups of affected individuals, the letter of transmittal of such study shall include as assessment of risk factors, other than the release, that may be associated with any disease discovered, if such risk factors were not taken into account in the design of the study. Again, this provision does not require a comparative risk assessment or the determination of all other possible risk factors before completion of the full-scale study. It permits observations regarding other potential causes of the adverse health effects in order to assist those responsible for providing medical treatment to the affected population.

SECTION 113 PREENFORCEMENT REVIEW

One of the most important and difficult issues resolved by the conferees regards the timing of citizen's suits challenging decisions. Such suits would involve allegations that the President or other officials have violated the cleanup standards or other requirements of the law and that public health or the environment would be threatened if the proposed action were undertaken or continued.

A major goal of the Superfund Amendments and Reauthorization Act of 1986 is to establish specific, uniform national health standards that will apply to cleanup decisions at Superfund sites. The Congress has been compelled to develop such specific standards because the executive branch failed to do so during the first 4 years of the program and ultimately issued a series of revisions to the national contingency plan which left far too many important cleanup decisions to the ad hoc judgment of individual employees in the field. Because of their to subjective nature, such decisions are intrinsically difficult to review, much less measure against the law's standard requiring all cleanups to protect human health and the environment.

The standards contained in the bill establish a series of nondiscretionary, minimum requirements which all Superfund responses must meet in order to assure the protection of human health and the environment. While the conferees fully expect officials of the Environmental Protection Agency and others to adhere to these standards, past experience has demonstrated that enforcement of such legal requirements by affected citizens' groups—acting as private attorneys general—is an essential component in the implementation of any such detailed statutory mandate. For this reason, section 206 of the bill establishs an independent citizens' suit provision under any section 310 of the act.

It is crucial, if it is at all possible, to maintain citizens' rights to challenge response actions, or final cleanup plans, before such plans are implemented even in part because otherwise the response could proceed in violation of the law and waste millions of dollars of Superfund money before a court has considered the illegality. Delay also places courts in the undesirable position of deciding whether to order an expensive corrective action which the executive branch or responsible parties will, be definition, be attacking as either excessively costly or unnecessary because the violations of are trivial.

Hypothetically, for example, the President might yield to the pleas of responsible parties and decide to ignore readily available permanent treatment technologies—for example incineration—in direct violation of the law's requirements, choosing instead to cap a site. Compelling a selection of the legally required remedy could, in a case like this, save time, money, and perhaps lives.

Concerns have been expressed throughout the reauthorization process that potentially responsible parties, in the guise of aggrieved citizens, might also take advantage of such opportunities for judicial review. If these fears were realized, such specious suits would slow cleanup and enable private parties to avoid or at least delay paying their fair share of cleanup costs.

To avoid such results, the courts

must draw appropriate distinctions between dilatory or other unauthorized lawsuits by potentially responsible parties involving only monetary damages and legitimate citizens' suits complaining of irreparable injury that can be only addressed only if a claim is heard during or prior to response action.

When the essence of a lawsuit involves contesting the liability of the plaintiff for cleanup costs, the courts are to apply the provisions of section 113(h), delaying such challenges until the Government has filed a suit. Compliants should be examined to preclude efforts to present such cases as "citizens' suits" challenging illegal response action. The crucial distinction between these two types of suits is that plaintiffs concerned with the monetary consequences of a response can be made whole after the cleanup is completed by reducing the amount of the Government's recovery. But citizens asserting a true public health or environmental interest in the response cannot obtain adequate relief if an inadequate cleanup is allowed to proceed and, in effect, create a nuisance or a violation of this or other laws. Delay in the timing of suits seeking monetary damages does not diminish the court's ability to grant later and adequate relief. However, delay in the timing of suits seeking an equitable order modifying the proposed response action would undermine the court's ability, either legally or practically, to grant adequate and timely relief at a later date.

Mr. President, whenever major legislation is brought before the House or Senate, special interests seek to include in the floor statement of one Member or the other language which they can later use in lawsuits. Superfund seems to have been especially succeptible to this.

I ask unanimous consent to have printed in the RECORD at this point a case example of this. It is a letter from an officer of the Chemical Manufacturers Association to an official of the Department of Justice. It is self-explanatory.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CHEMICAL MANUFACTURERS ASSOCIATION,
August 7, 1986.

NANCY FIRESTONE, Esq.,
Department of Justice,
Land and Nature Resource Division,
Washington, DC.

Re: CERCLA Administrative Record Provision.

DEAR NANCY: In lieu of trading phone calls anymore, I am enclosing for your review a proposed colloquy on the applicability of the CERCLA administrative record provisions to pending litigation. We will be discussing this language with Jan Edelstein, Janet Potts and Diana Waterman. I would appreciate your comments at your earliest convenience.

Thank you for your cooperation.

Yours truly,

BARBARA A. HINDIN,
Assistant General Counsel.

Mr. STAFFORD. Mr. President, I do not wish to belabor this matter and, for that reason, will not dwell on the detailed points which this letter attempts to make on behalf of the chemical industry. I trust that if Members, or judges, encounter this language elsewhere they will know of its origin and take that into account.

I would, however, like to make one observation. A question which has been raised several times is whether a responsible party can hang back from the administrative proceeding because it wishes to avoid publicity or liability, trusting that another will adequately represent its point of view, then later intercede should that have failed to happen. The answer is no.

These companies and individuals have an obligation to come forward and present their best arguments and the evidence which best sustains those arguments. It a potentially responsible party chooses to avoid the risks associated with participating in the administrative proceeding, than it must bear the risks of having made the choice. If the record is inadequate with respect to that particular party or the decisions are somewhat unfair, that is a consequence of deliberate or negligent inaction. They can't have their cake and eat it too.

Indeed, a court should apply not merely principles of law, but equity as well. One guideline should be to view less favorably the arguments of those who failed to participate when they knew or should have known that they had an opportunity to do so. This is because in choosing to abstain from the administrative process such parties, through their own volition, prolonged and complicated a process intended to protect human health and the environment. Such conscious decisions to knowingly increase the risks associated with these poisonous chemicals, motivated by economic self interest or litigation strategy should cause a court to presume that the parties enter without clean hands.

Mr. President, I ask unanimous consent to have printed in the RECORD a colloquy on retroactivity of changes to judicial review provisions.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DRAFT COLLOQUY ON RETROACTIVITY OF CHANGES TO JUDICIAL REVIW PROVISIONS OF SECTION 113(j)(1) AND 113(k)(2)(C)

Question: I wish to clarify how the changes in the provisions of the law governing judicial review of cost recovery decisions are intended to apply to pending cases seeking judicial review of past EPA decisions. My concern is that we not prejudice parties currently seeking review, offend principles of due process or fail to pay proper attention to separation of powers limitations.

First, I ask my distinguished colleague to confirm that we intend that these judicial review provisions be applied consistent with principles of due process and that such principles are not in any way diminished by the failure to mention due process in section 113(j)(1) of the bill.

Answer: The gentleman is, of course, correct that principles of due process of law apply. The bill's reference to "otherwise applicable principles of administrative law" is not in any way intended to undermine the applicability of the guiding principles of fundamental fairness embodied in our due process guarantees.

Qustion: Among those due process principles, we include the doctrine of "manifest injustice," the recognized exception for not applying legislation retroactively to affect pending cases, do we not?

Answer: Again, the gentlemen is correct.

Question: So that, in circumstances where parties had acted and proceeded in reliance on prior law and procedures and their conduct would have been different if the present law had been known and the change in law foreseen, or where the new judicial review provisions would defeat the reasonable expectation of the parties, or where application of the new provisions to a pending proceeding would be unfair, a court may consider whether application of the judicial review sections of the bill to a pending case would itself be inequitable, arbitrary or capricious.

Answer: That is correct.

Question: Would the distinguished colleague also agree that "otherwise applicable principles of administrative law" include the principle that the record may be supplemented with new evidence not reasonably available when the administrative record was developed?

Answer: Again, I concur and assure the gentleman that all such principles of administrative law are intended to be considered by the courts. The particular principle he notes was also referred to in the report on this bill by the Committee on the Judiciary of the House. The slight change in language in the Conference Report does not signal exclusion of these principles.

Question: So traditional concepts are intended to govern whether discovery during the review proceeding is needed in order for the reviewing court, among other things, to verify the completeness of the administrative record, to define the "whole record" compiled by the agency, to identify and examine oral communications not reflected in the written record.

Answer: That is right.

Question: And general administrative law principles are to control whether the court should receive supplementary material to explain or clarify the record, to help the court determine whether the agency considered all relevant factors, or to provide necessary background materials for the court so that it may understand complex issues in order for the court to be able to fulfil its review function.

Answer: That is also correct.

Question: Finally, I direct the manager's attention to a late addition in the Conference Report about which I am most concerned, section 113(k)(2)(C) of the bill. This language about what constitutes the administrative record until such time as the President promulgates regulations to govern proceedings on which to base selection of a response action cannot be meant to straitjacket courts in pending cases. If parties are already contesting the fairness and adequacy an EPA-selected response action on the basis of a fatally flawed administrative proceeding and record, then we should not, consistent with principles of due process and separation of powers, tell the court how to decide the issue. That language is intended to provide short-term, interim authorization to the President to proceed with no actions, rather than to shackle the courts' judicial determination of already pending review issues, is it not?

Answer: That is correct, we are not telling the courts how to decide any ongoing challenge but, instead, providing the President with express authority to make new decisions and develop administrative records without having to delay in order to promulgate comprehensive regulations first.

I thank my colleague for his cooperation.

STATE NUISANCE LAW CHALLENGES TO EPA CHOICE OF RESPONSE ACTION

Mr. STAFFORD. Mr. President, I also would like to call the attention of the Senate to the interplay of two superficially unrelated provisions. They are section 113(c), which establishes a new 113(h), and 121(a), which adds a new section 121, subsection (d) of which is important to this discussion.

The time of review of judicial challenges to cleanups is governed by

113(h) for those suits to which it is applicable. It is not by any means applicable to all suits. For purposes of those based on State law, for example, 113(h) governs only those brought under State law which is applicable or relevant and appropriate as defined under section 121. In no case is State nuisance law, whether public or private nuisance, affected by 113(h). As the statement of managers makes clear—

> New section 113(h) is not intended to affect in any way the rights of persons to bring nuisance actions under State law with respect to releases or threatened releases of hazardous substances, pollutants or contaminants.

It will no doubt present a challenge to courts to determine what "actions"—I observe that this is not limited only to suits—are based on a "nuisance" theory and which are not. As the member of the conference committee who insisted upon stating expressly what all had agreed was their intent, I would like to provide some insight into the purpose and meaning of the provisions in sections 113, 121, and, to a lesser degree, 115.

First, the fundamental purpose is to preserve rights under nuisance law as it is defined under the relevant State law. The question of whether any given law is or is not "nuisance" is determined by reference to the laws, decisions and definitions within that State. It may well be that what one State calls negligence or trespass, another will call nuisance. It may also be that some line of nuisance law has been either codified or otherwise defined by the legislature and thus embodied in a statute rather than case law. That is, for example, the situation with respect to some Vermont laws.

The special status conferred upon State nuisance actions, permitting filing at any time, is an essential feature of the bill. There is a crucial difference between the relief sought by one claiming that an EPA-proposed remedy would constitute a nuisance. The PRP plaintiff can in most cases be made whole by relief after the fact—in the form of contribution, indemnity, or dismissal of EPA's enforcement action. The nuisance plaintiff is in an altogether different situation: his injuries are likely to involve threats to health, or use and enjoyment of land, or other quality-of-life factors. When such a plaintiff has reason to oppose construction of, say, a toxic waste incinerator as part of site response, only a court order blocking construction can provide just relief. Only a before-the-fact remedy can do the job.

Numerous legal scholars have lamented the lack of any universally accepted definition of the nuisance concept. Moreover, some State laws create nuisance-type offenses without actually employing the word. See, for example Vt. Stat. Ann. tit. 10, 6610, 6610a—abatement of imminent and substantial threats to public health. In light of this confusion, Federal courts may have different notions of what State nuisance law includes than do State courts. Making State court rulings binding on Federal courts as to what constitutes State nuisance law under CERCLA will ensure, therefore, that the full range of injuries against which States desire nuisance protection is considered by those who select Superfund site responses. The burden of cleaning up the Nation's toxic waste sites should not be placed on the backs of the innocent people who happen to live near those sites.

It is expected, of course, that State courts will apply substantive State law in making their determination. Allowing the meaning of "State nuisance law" to be construed according to State law does not compromise the questions. There is nothing to prevent Congress from articulating a Federal rule, as we do here, that courts are to be bound by State law in interpreting a Federal statutory phrase. Indeed, there is precedent for this event at the constitutional level. See Ruckelshaus versus Monsanto, 467 U.S. 986, 1001 (1984)—meaning of "property" in fifth amendment taking clause).

Nuisance law encompasses public nuisance as well as private nuisance. While the two causes of action are quite distinct, each concerned with interests of the innocent public that must be protected at Superfund cleanup sites. Historically, the essence of a private nuisance was an interference with the use and enjoyment of land. Courts have found actionable interferences with this interest to arise from a variety of circumstances that might come about through a CERCLA response. Professors Prosser and Keeton, for example, list nuisance decisions based on interference with the physical condition of the land itself, as by pollution of an underground water supply, or based on unpleasant odors, smoke or gas, loud noises, and the threat of future injury. Prosser and

Keeton, The Law of Torts 619-620 (5th ed. 1984). Moreover, several decisions show that nuisance actions are maintainable even though no use is being made of the plaintiff's land at the time.

Some courts no longer adhere to the requirement that private nuisance be predicated on an interest in real property or view such property interests broadly in order to extend the protective sweep of the theory. This approach is consistent with the purpose here of preventing injuries from occurring, rather than attempting the difficult, sometimes impossible, task of making a plaintiff whole with money, after the fact of an injury.

As I said earlier, the selection of site response is also subject to public nuisance actions. Public nuisance has been defined as "the doing of or failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public." *Commonwealth* v. *South Covington Railway Co.*, 181 Ky. 459, 463, 205 S.W. 581, 583 (1918). It is a much broader term than private nuisance and usually envisions but does not necessarily require enforcement by government rather than private individuals. It would indeed be anomolous if Congress were here to alow private nuisance suits, where injury is inflicted on only a few persons, but not public nuisance actions, where the injury affects the entire community. As with private nuisance, court decisions finding public nuisances include many that involve injuries of a kind not unlikely to occur from CERCLA site remediation. I refer to cases involving interferences with the public health, public safety, and public comfort.

The reference to nuisance law may well include statutory as well as common law. At one time almost entirely judge made, nuisance law today contains a large statutory component in every State of the country. This longstanding trend reflects the critical need of legislative clarification and predictability in an otherwise murky realm. There would be little logic or fairness, therefore, to allowing challenges to EPA's selection of a CERCLA response plan based solely on the common law side of State nuisance law.

Placing statutory nuisance actions under the umbrella of the nuisance law phrase is especially important in that a common type of nuisance statute takes the form of defining a particular act as a nuisance per se. These statutory definitions greatly alleviate the evidentiary burden on the aggrieved party, by dispensing with the need to prove the existence of a substantial and unreasonable interference with land, or an actual threat to the community health and comfort, in the particular case before the court. Such definitional provisions are found in every State—Prosser and Keeton, The Law of Torts 646 (5th ed. 1984)—and include definitions of acts as both public and private nuisances. Examples include Cal. Civil Code 841.4 (private nuisance), Pa. Stat. Ann. tit. 18, 6501(a)(1) (placing dangerous substance upon land of another defined as public nuisance); N.J. Stat. Ann. 2C:33-12 (public nuisance); and Cal. Pub. Res. Code 2558 (public nuisance).

State statutes also address other, nondefinitional aspects of nuisance. For example, statutes may permit private abatement of certain nuisances, upon proper notice. See, for example, Cal. Civil Code 3502-3503. And, of course, statutes are necessary to empower particular governmental agencies to bring prosecutions against public nuisances, and to specify particular monetary and injunctive remedies. See, for example, Pa. Stat. Ann. tit. 35, 6018.104.

Statutory nuisance laws in all the foregoing categories, as well as any others deemed appropriate by the State courts, are subsumed by the phrase "nuisance law."

A particularly instructive case of a State statute that embodies nuisance concepts, without express designation as such, occurs in my own State of Vermont. Vermont Acts 250, enacted in 1969, illustrates one kind of statute to be considerd by courts as State nuisance law.

Vermont Acts 250 seeks to regulate large-scale land development with a view toward assuring, and I quote from the act, that "the lands and environment of the State * * * are devoted to uses which are not detrimental to the public welfare and interests." This statement of purposes might as well have been lifted from a hornbook chapter on nuisance law and the societal interests it protects.

More specifically, the Vermont law creates a State environmental board and district environmental commissions with power to regulate large-scale development under a comprehensive State land-use plan. In the absence of a permit, no person may sell an interest in any but the smallest subdivisions, or construct improvements occupying more than 10 acres or on mountaintop property of any acreage. Most important here, the statutory preconditions for permit issuance are an unmistakable echo of the findings often made by courts in nuisance suits. These include determinations by the board or commission that the proposed project will not: first, result in undue water or air pollution, second cause unreasonable soil erosion so that a dangerous condition results, or third, have an undue adverse effect on the scenic beauty of the area or on rare or irreplaceable natural areas.

Similar legislation governing the siting of large subdivisions and major development was enacted by the State of Maine. Site Location of Development Act, Main Rev. Stat. Ann. tit. 38, 481-489. See generally Jackson, Development Legislation in Maine and Vermont, 23 Maine L. Rev. 315 (1971).

Mr. President, both the Vermont and Maine statutes were enacted to deal with adverse impacts on fragile natural resources due to development occurring where it should not. Such nuisance-type enactments, where applicable, can be used to challenge, before the harm is done, any ill-advised response actions chosen without full knowledge of local conditions.

In a sense, the codification by some States of their nuisance is unfortunate, because it may well complicate the task of courts in sorting those which are subject to 133(h) from those which are not. But the richness and diversity of these laws makes it impossible for the Congress to fashion a single definition which can be adequately describe every situation. Courts should be guided in their decisionmaking process by certain principles:

First, State laws, especially those which help prevent injuries from occurring rather than providing after-the-fact redress, should be accorded deference.

Second, more labels should not determine the outcome of any particular case. Courts should look behind the labels to the true interests sought to be protected, and to the complaints of the plaintiffs to determine what protection they are seeking.

Third, error should be on the side of preventing injury to innocent bystanders.

SECTION 119—RESPONSE ACTION CONTRACTORS

An important element of a successful Superfund program is the development of a private sector for cleanup services. Such services range from scientific and technical analysis of the problems at a site, through design and implementation of the appropriate remedy.

Over the past few years, the market for such services has developed relatively slowly. However, given the expansion of the program contemplated under the Superfund Amendments and Reauthorization Act of 1986 (SARA), there should be a rapid growth in both the number and size of the firms providing such services.

Unfortunately, as in any market where rapid expansion is spurred by a sudden and large infusion of funds, there may also be opportunities for abuse. The history of some Federal programs demonstrates the inflation of costs and diminution of quality that such circumstances can provoke. To minimize this possibility, it is essential to carefully weigh a variety of competing interests. The provisions of SARA regarding contractor liability and indemnification reflect such a delicate balancing.

At the outset of the reauthorization process, Members were confronted by predictions that the insurance for those engaged in the treatment, storage, disposal or cleanup of hazardous substances would disappear unless the Congress eliminated their liability under State or Federal law. However, no assurances were provided that such changes would necessarily result in either a reversal of the perceived insurance crisis, or the reinstatement of reasonable rates for readily accessible insurance policies. On the other hand, this Senator and others believed that changes in the State liability schemes would reduce contractors' incentives to exercise the greatest care and maintain quality, especially in a process influenced greatly by lowest cost bidding. There was powerful and adamant insistence, especially in the Senate, that the integrity of State laws, and the well-established Federal principle of preserving them, be maintained. This is particularly important in view of the premise of CERCLA, the Clean Water Act, the Resource Conservation and Recovery Act and other laws that those engaged in the business of handling toxic materials should do so at their own risk, knowing that they are subject to strict liability.

Section 119, as well as other provisons of the bill—for example, sections 208 and 210—reflects an effort to balance concerns about the actual or perceived insurance crisis against the need to maintain legal liability as an incentive to ensure high quality, safe work. It provides contractors with limited protection from liability under Superfund for nonnegligent misconduct. It also gives the President limited authority to indemnify contractors if all reasonable sources of private insurance are unavailable. The legislation does not affect in any manner liability imposed under State law, whether statutory or common, nor does it reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint, and several.

Indeed, the final issue resolved by the conferees was whether the statement of managers should include language expressing a congressional view that the appropriate liability standard at the State level is negligence, and urging States to amend their laws accordingly. The statement of managers contains no such suggestion, although I do not doubt that some persons may assert that there was an agreement to that effect. There was and is not any such agreement. Moreover, proposals to include manager's language urging the adoption of a negligence standard were expressly not agreed to by the conferees due to the deeply held conviction on the part of some that these matters should be left exclusively to the province of the States to decide, unswayed by congressional influence.

It is true that this bill reflects a change in the Federal liability under Superfund. But it is a change that was only reluctantly agreed to and then only after it had become clear that if, in fact, insurance were unavailable, all of the reauthorization efforts would have been for naught. It is a reality in the United States, unlike many other industrialized nations, that businesses refuse to expose themselves to what many would consider the ordinary risks of free enterprise. Businesses and their managers view liability insurance as a precondition to entering or remaining in markets including, unfortunately, Superfund responses. Thus, the Congress was in a sense held hostage by the threat that insurers would refuse to provide coverage. There really was no choice but to pay the ransom and change the Federal standard.

States, however, do have other choices. The insurance industry is regulated at the State level and therefore can be compelled to cooperate. It is possible to require assigned risk pools, regulate premiums, authorize new forms of self-insurance or otherwise respond to the insurance dilemma in some fashion other than altering liability. Of course, some legislatures may well conclude that a change in liability is itself an appropriate response, but they must then confront the equally difficult question of whether a victim should bear the costs of an injury caused by the contractor and, if so, why. The real issue in these cases is not whether it is fair for the contractor to bear the costs of injuring another during the course of a cleanup, but whether it is fairer for the contractor or the victim to do so. A victim's only connection with the poisonous chemical is that he or she was injured; the contractor, in contrast, chose voluntarily and for profit to hold itself out as competent to perform safety tasks that were classified in advance by the Federal Government as among the most difficult and dangerous in the Nation.

These questions of equity and liability are among the most intellectually and practically challenging that the Congress can ever encounter. The solution of one Congress can differ from that of another, just as the solution of a State legislature may differ from that of the Federal legislature. For that reason, it is inappropriate and unwise for a State to assume that the Congress is the fount of wisdom on this subject, to be followed blindly. I believed there are better solutions to this problem than those in this bill, and urge State legislatures to continue to search for them.

The provision applying liability under Superfund for negligent, reckless or intentional misconduct applies only to parties who have no connection to the facility other than as response action contractors. It does not affect liability for the activities of those otherwise liable under sections 106 or 107, even if such activities occur in the course of conducting a response action at a site.

The provisions authorizing indemnity for response action contractors are subject to the President's compliance with a series of threshold requirements. The legislation divides these requirements into two categories: first, those that must be met for every indemnification agreement signed under the act; and, second, those additional requirements that apply to indemnification agreements covering cleanup work done under contracts with private responsible parties, as opposed to Federal and State governments.

The general set of requirements applying to all indemnification agreements contains three components.

First, the President must determine that the liability covered by the indemnification agreement exceeds, or cannot be covered by private insurance available at a fair and reasonable price. The President must further determine that such insurance is not generally available to competitors of the contractor. Any individual firm's inability to find insurance therefore cannot justify use of the indemnification authority. Rather, the President has authority to grant indemnification only if insurance is not generally available to viable competitors of the contractor, on a marketwide basis, at a "fair and reasonable" price. Determinations of the fairness and reasonableness of the price of private insurance shall not be made on the basis that insurance costs are limiting profits that might otherwise be achieved by the contractor. A price is to be judged unfair and unreasonale only if the costs of insurance are markedly disproportionate to the risk being assumed by the insurer. The comparative cost of insurance to other business expenses is irrelevant.

The President must also determine, prior to granting indemnification, that the contractor has made diligent efforts to obtain insurance coverage from non-Federal sources. This determination is closely related to the finding that insurance is not generally available to all those potentially capable of performing response action work; however, the "diligent efforts" showing imposes the burden of demonstrating such unavailability on the party seeking indemnification.

The third and final requirement is that, in the case of indemnification agreements covering more than one facility, the contractor must make a separate showing of diligent efforts to obtain non-Federal insurance coverage before it begins work at each individual facility.

The special requirements covering indemnification agreements at sites where the contractor is hired by potentially responsible parties include a determination by the President that the total net assets and resources of the potentially responsible parties are not adequate to provide indemnification. This requires a rigorous and comprehensive analysis of the financial status of such parties, and a determination that they are unable to provide all, or part, of the indemnification required. Complete Federal indemnification must be the only alternative.

Finally, before the Federal Government pays any claims under indemnification agreements at private sites, the contractor must have exhausted all administrative, judicial and common law remedies for covering indemnification claims against all other potentially responsible parties participating in the cleanup of the facility. The burden of proving that such remedies have been exhausted resides with the contractor.

Any indemnification agreement signed under the authority of Superfund must contain appropriate deductibles and limits on the Government's liability for claims, including both limitations on the dollar amounts to be paid and conditions affecting the obligation to pay claims such as compliance by the contractor with sound engineering practices.

Although the Presidents has authority to enter into indemnification agreements for cleanup at federally owned or operated facilities, claims paid under such agreements can never be made out of the hazardous substance Superfund but must instead be paid by the agencies themselves, as required under sections 107(g) and 111(e)(3).

The primary purpose of Superfund is to minimize releases of toxic chemicals. This is achieved by establishing a standard of liability only marginally short of absolute based on the conviction, now confirmed by experience, that this will induce the highest standard of care. Erosion of liability, whether through indemnification or otherwise, increases the probability that care will be lessened proportionally. Therefore, the fund is to be used to provide indemnification only when no other option is available to achieve cleanup.

SECTION 120—FEDERAL FACILITIES

Since the original Superfund law was passed in 1980, Federal agencies and departments responsible for hazardous waste facilities have lagged behind the Environmental Protection Agency and the private sector in identifying and assessing dump sites in need of cleanup.

The General Accounting Office [GAO] estimated in April 1985 that there is an average of two to three potentially hazardous sites at each 473 military bases across the country, for a total of some 800 to 1,400 military sites nationwide. These figures do not include sites operated by the Department of Energy [DOE], where radioactive and chemical wastes that were byproducts of the Nation's atomic weapons research and manufacturing programs are buried.

Although the 1980 Superfund law subjected Federal facilities to the same legal requirements as apply to private sites, the absence of aggressive enforcement by EPA and the Department of Justice [DOJ] have led to a Federal cleanup program that not only responds slowly and tentatively to the most notorious situations, but has yet to make a comprehensive effort to deal with other hazardous facilities.

The provisions included in section 120 of the Superfund Amendments and Reauthorization Act of 1986 are designed to institute fundamental reforms of the Federal facilities cleanup effort in three key areas.

First, the amendments make it clear that the Environmental Protection Agency has final authority over other Federal agencies' or departments' compliance with the law. By giving this authority to the agency currently responsible for implementing Federal environmental programs, we assure that the cleanup effort at Federal facilities is both adequate and consistent with parallel efforts at privately owned or operated sites.

Second, the amendments require a comprehensive nationwide effort to identify and assess all Federal hazardous waste sites that warrent attention. Using as a base the inventory required under the Hazardous and Solid Waste Act Amendments of 1984, the legislation requires EPA to assess such sites in the same manner that it assesses privately owned or operated facilities. The legislation further requires that any Federal facility that meets the criteria applied to private sites listed on the national priorities list [NPL] must be placed on the NPL. Although Superfund money cannot be spent to clean up such facilities, their placement on this list will help assure that compliance with the law's standards is achieved by the Federal Government in an effective and timely manner.

Third, the amendments set forth timetables both for the formulation of cleanup plans and for the initiation of cleanup at all Federal facilities qualifying for listing. The amendments reiterate existing law that all cleanup standards and other legal requirements—except as specified—apply to Federal facilities in the same manner as they apply to private sites. Timetables, standards and requirements are enforceable under the citizens' suits provisions of the legislation as nondiscretionary duties of the Federal Government.

The Superfund Amendments of 1986 establish special rules and procedures for the application of State environmental and health laws to facilities on the NPL, including Federal facilities. For all other Federal facilities the legislation does not diminish the application of State law nor does it preempt State law in any way. A State cannot, however, single out only Federal facilities by creating special rules for them that are not otherwise applicable to similar situations at private sites, and then expect these rules to be enforceable under Superfund. Such rules may, or course, be enforced under the State's own laws or, perhaps, other Federal laws, if this would otherwise be legal.

The hazardous waste compliance docket created by the legislation is to be a full and comprehensive inventory of all hazardous facilities in the country, including releases required to be reported under section 103 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA].

The Administrator of EPA is responsible for conducting preliminary assessments and then evaluating all facilities included on the hazardous waste compliance docket. The costs of such assessments and evaluations are to be paid by the Federal agency or department responsible for the facility, as are the costs of preparing remedial investigations and feasibility studies, conducting other necessary studies and, ultimately, cleanup up the facilty. In carrying out its responsibilities, EPA must be scrupulous in assuring that Federal facilities are treated the same as private facilities and are not given any special treatment.

Following the listing of a Federal facility on the national priorities list, the legislation requires that the relevant Federal agency or department enter into an interagency agreement with the Administrator for the completion of remedial action at such facility. Such an agreement must reflect the mutual agreement of the responsible Federal agency or department and EPA regarding what remedial action is appropriate for the facility.

Because interagency negotiations have too often become stalemated when the responsible agency has refused to comply with EPA's conclusions regarding the remedy needed to protect human health and the environment, the legislation explicitly gives EPA final authority to select a remedy over the objections of the responsible agency when necessary. This authority does not diminish the legal obligations of the responsible agency for assuring the cleanup is carried out in a timely and effective manner and, should citizens' enforcement action at the facility be taken, the responsible agency should be a primary defendant from whom relief is sought.

Finally, the legislation recognizes the reality that, only in unusual cases, the national security may require issuance of circumscribed Executive orders exempting a Federal facility from the requirements of the Superfund Amendments and Reauthorization Act of 1986. In all such cases, Executive orders should adopt the method of protecting legitimate national security interests that maximizes compliance with the environmental and health requirements imposed by the legislation. For example, it may be appropriate to require that all EPA employees reviewing cleanup plans obtain a national security clearance, but it would not be appropriate to exempt such plans from national cleanup standards simply because EPA employees are assigned to ascertain what standards should apply to the cleanup.

Mr. President, I would like to observe that this is one area where it should not have been necessary for the Congress to write new amendments to the law. Hopefully, there will come a day when the law will be implemented as the Congress intended and these provisions will become unnecessary.

In 1980, the Congress went to great pains to assure that the U.S. Government was treated, in all respects, like any other responsible party. The law's definition of a "person" accords no special treatment for the United States, and two other provisions, 107(g) and 111(e)(3), expressly prohibit it. But no loophole, it seems, is too small to be found by the Federal Government.

In the Executive order implementing the 1980 law, its authorities with respect to Federal facilities were delegated to the heads of the Federal agencies. In the judgment of this Senator, that provision of the Executive order is illegal, but to the best of my knowledge it has never been challenged. Perhaps someday it will be and a court will read the clear mandate of the law and set aside the Executive order. Or, perhaps a revised Executive order will someday be issued.

In the meantime, Mr. President, these amendments make no change in the provisions of the 1980 law which I have just cited. They do not in any way, expressly or impliedly, sanction the Executive order or the conduct of the executive branch. The agencies of the Federal Government remain strictly, jointly and severally liable, and otherwise subject to the law just as if they were nongovernmental persons. These amendments merely reflect an acceptance by the Congress of the reality that the, however illegal the actions of the executive branch may be, compelling its officers to undertake and implement cleanups must be the first priority.

SECTION 122—SETTLEMENTS

This section of the legislation is intended to encourage the Environmental Protection Agency [EPA] and other agencies responsible for implementing the Superfund Program to increase their efforts to impose the burden and costs of cleanups on responsible parties through the use of settlement agreements. When the administration presented its Superfund reauthorization proposal to the Congress in February 1985, EPA Administrator Lee M. Thomas stated that EPA intended to ensure that private parties pay for and perform at least half of the cleanup work at Superfund sites. The funding level established by the Superfund Amendments and Reauthorization Act of 1986 [SARA]—$8.5 billion for basic site cleanup—reflects this assumption.

If half the responses are to be paid for directly by private responsible parties, the timing and magnitude of settlement and enforcement efforts becomes crucial. The Government's current enforcement program lags far behind the goal of private party cleanups at half of the Superfund sites, both in terms of the number and scope of the agreements that have been reached and in terms of the speed with which such agreements have been implemented.

Because of the weakness of the current enforcement program, section 122 clarifies and affirms the Government's enforcement authority by creating special procedures and timeframes for the negotiation of private party settlements. Section 122 contains these procedures, which are available to encourage more comprehensive, expeditious and adequate settlements. However, the use of the procedures is discretionary with the President—or a delegee—and a decision whether to invoke section 122 is not subject to judicial review. The additional litigation that would result if private responsible parties were allowed to challenge and litigate the decisions whether to use the procedures would serve only to further paralyze an already lagging enforcement effort.

The procedures contained in section 122 are premised on the current Superfund liability system, which imposes strict, joint and several liability on those found responsible under sections 106 or 107 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA]. Earlier versions of the legislation, including the reauthorization bill (H.R. 5640) passed by the House of Representatives during the 2d session of the 98th Congress, contained explicit restatements of this underlying liability. Such provisions were deleted from SARA because they are unnecessary, given the clear and correct body of case law that has confirmed and developed the doctrine of strict, joint and several liability under Superfund and section 311 of the Clean Water Act.

The importance of placing the settlement procedures established under section 122 in the context of Superfund's liability scheme cannot be overstated. Settlements are an alternative to full prosecution of strictly, jointly and severally liable parties and must always be evaluated in relation to the relief the Government could have obtained by litigating the case. Because Superfund imposes liability without regard to fault, and requires that when the harm is indivisible each party be jointly and severally liable for the full costs of cleanup, settlements for only a portion of cleanup costs must be measured against a high standard. Under a liability scheme as rigorous as that of Superfund, recoveries of amounts less than full costs are disfavored and are justified by only extraordinary circumstances.

Perhaps the best illustration of congressional expectations regarding the operation of the new provisions in the context of so-called mixed funding agreements.

The legislation confirms the President's existing authority to enter into "mixed funding" agreements, whereby the funds contributed by potentially responsible parties are supplemented by Federal Superfund dollars. The legislation also permits the President, in his or her sole discretion, to prepare a nonbinding preliminary allocation of responsibility dividing costs amount the potentially responsible parties even though they are jointly and severally liable under the law. But such allocations are to be used for settlement purposes only and are never, under any circumstances, admissible in any judicial or other proceeding.

Both of these provisions reflect the reality that the government will sometimes settle for less than full cleanup costs from a group of potentially responsible parties and then seek to recover remaining costs from nonsettling parties. While this flexibility is desirable in a settlement program, strict, joint and several liability is an element of the law because it assures full, rather than partial, recoveries. Joint and several liability in particular, shifts the burden of pursuing recalcitrants from the Government to other potentially responsible parties. The theory underlying Superfund's liability scheme was, and is, that the Government should obtain the full costs of cleanup from those it targets for enforcement, and leave remaining costs to be recovered in private contribution actions between settling and nonsettling parties.

Therefore, the provisions ratifying EPA's authority to enter into "mixed funding" agreements and prepare nonbinding allocations should not be read as encouraging any departure from the full recovery policy established in the original "Superfund law." Nor do these provisions to shift the burden of pursuing recalcitrants from private parties onto the Government.

To facilitate settlements, the legislation confirms the President's authority to improve such agreements from a private party's perspective. The two most important categories of so-called sweetener provisions are those authorizing agreements to freeze a responsible party's percentage share of future cleanup costs and covenants not to sue for future liability. While such provisions are useful tools that the President may use to assist settlements, they unfortunately could result in inadequate payments or recoveries of cleanup costs—particularly for unknown and unanticipated problems. Payment and recovery of full costs is the overriding goal of the program. Therefore, all such provisions must be narrowly and carefully focused and not based on inadequate information about the full extent of a private party's potential liability.

The President should exercise special caution in agreements which might freeze an individual party's percentage share of future cleanup costs. Such future costs could arise from two very different situations: Contamination might be discovered that was undetected at the time the agreement was first signed; or, the initial remedy might fail for unanticipated reasons. In each case, the cost of remedying the unanticipated problems could be substantial and the facts and equities of the unanticipated problems could justify a larger contribution from the responsible parties which signed the original agreement.

The bill also explicitly authorizes the Government to enter into covenants not to sue. This authority exists under current law, but the Government has been reluctant to exercise it, according to officials of the Environmental Protection Agency and the Department of Justice, because of the widespread adverse publicity surrounding several early settlements. The express confirmation contained in this bill is not an encouragement to enter into settlements where they are unwarranted or inappropriate. Nor is it an indication that the Congress is necessarily dissatisfied with the number or content of settlements which the Government has entered into. Rather, it is merely a formal acknowledgement that settlement authority exists and may be exercised, if that is appropriate.

The inappropriate use of settlement authority would have an implication for the integrity of the entire program and the credibility of its managers. Indeed, it was such inappropriate use that created the adverse publicity which subsequently chilled the Government's willingness to enter into negotiations, even where that was patently reasonable.

An abuse, real or perceived, of the settlement authorities confirmed by this bill would recreate a situation which was undesirable from the perspective of nearly all parties. This is especially true of the covenants not to sue, because they represent a permanent commitment on the part of the Government to admitted polluters to never again pursue them, even when the threats to public health or the environment might be extraordinary.

It is essential that even the appearance of impropriety be avoided, and that there never be any doubt in the mind of the public that it is being completely protected, both now and in the future. This will require narrow, careful, and thoughtful implementation of the law's authorities, especially in areas where the Congress utilized necessarily vague language, such as the "reasonable assurances" test of section 122(f).

Section 122(f) gives the President discretionary authority to grant covenants not to sue for future undetected contamination in extraordinary circumstances, if the agreement contains "reasonable assurances" that public health and the environment will be protected from any future release.

In determining whether an extraordinary circumstance exists, the President may consider—where applicable—the same factors—for example, volume and toxicity of waste, culpability of potentially responsible parties—as would be considered in a normal settlement because these factors cover all of the usual factual considerations presented by a Superfund case. However, the identification of extraordinary circumstances justifying a covenant not to sue for undetected contamination involves an independent judgment by the President that the factors involved in the specific case are both atypical of the usual enforcement matter and, also, warrant special treatment.

In the past the Government has deemed certain cases involving de minimis or bankrupt parties to represent extraordinary circumstances justifying the granting of a covenant not to sue for undetected contamination, the circumstances of the contamination and the cleanup, taken as a whole, should establish the basis for a conviction—not merely a belief—that such undetected releases will not occur and that other potentially responsible parties will be available to pay for all subsequent cleanup that might be necessary.

Even after extraordinary circumstances are identified, such convenants may be granted only when other terms and conditions of the agreement provide adequate protection against future releases. Under no circumstances would such terms and conditions include the general availability of the fund to pay for future cleanup. However, they could include a clause in the agreement specifying that the covenant becomes effective only after a certain time period. It must be sufficient to provide the Government with ample opportunity to discover whether unanticipated contamination exists.

Finally, the bill reaffirms the President's authority to preserve the ability to take enforcement actions under sections 106 and 107 of current law if any future problems develop at a site cleaned up under a consent decree.

Section 122(f) reflects EPA's settlement policy as applied through July 1986. Under this policy, covenants not to sue for undetected contamination at a site are included in consent decrees only under extremely rare circumstances. In over 200 cases settled under the Superfund Program, the Government has included such covenants in only two or three cases. The provision anticipates no increase in or expansion of this policy or its rate of application.

The bill eliminates prosecutorial discretion, by mandating that the President grant covenants not to sue, in two extremely limited circumstances: First, when the cleaned-up hazardous substances are moved offsite to a facility which has received a final permit under the Resource Conservation and Recovery Act [RCRA]; and, second, where such substances are treated in such a way as to destroy, eliminate or permenently immobilize all hazardous constituents.

The first circumstance, involving offsite transport to a RCRA facility holding a final permit, can and will occur only if and when the President rejects an alternative remedial action plan that does not involve offsite transport but otherwise meets the requirements of the national contingency plan. In other words, in order to qualify for a mandatory covenant not to sue, the settlement agreement must embody an offsite remedial action that was selected after full development of an onsite alternative that also complies with the law.

The second circumstance, involving permanent treatment of all hazardous substances covered by the covenant not to sue, must result in either the destruction of such substances or fundamental changes in their characteristics such that they no longer pose a hazard to human health or the environment. Long-term storage in above ground—or underground—engineered structures does not qualify as a permanent treatment technology covered by the second circumstance.

In either case, the release goes only to the materials at the site to which they were transported—in the first circumstance—or to their residues, ashes, or other remnants—in the second circumstance. In either event, the set of circumstances defined by the covenant should constitute a null set, in the absence of grave error.

EXTINGUISHING CONTRIBUTION RIGHTS BY ADMINISTRATIVE SETTLEMENT

Mr. President, I support fair settlements as an efficient alternative to litigation. Still, I must speak out against what I see as an unwise and arguably unconstitutional settlement provision in section 122 of the conference bill.

It is often argued that responsible parties may be unwilling to enter into settlements with the Government without assurance that further liability will not be incurred in contribution suits by nonsettling responsible parties. Such suits are anticipated in situations where the Government, following settlement with less than all the responsible parties at a site, obtains further cost recovery in a later enforcement action against the nonsettling responsible parties. As passed by the Senate, H.R. 2005 provided that when a potentially responsible party entered into a judicially approved settlement, that party was not liable for contribution claims regarding matters addressed in the settlement.

The contribution protection in the

Senate bill, I stress, was limited to judicially approved settlements. The conferees, however, adopted the approach of the House bill, which gives contribution protection in the case of administrative as well as judicially approved settlements. It is this broadening of the Senate bill's proposal that causes me deep concern, for it is bad policy and very likely unconstitutional.

It is bad policy because it gives bureaucrats, often under pressure to produce settlements, the power to determine when legitimate claims on nonsettlors shall be cut off. I do not for a moment question either the motives or energy of executive branch employees. I simply point out that both the Congress and EPA management have sought to crank up the Government's enforcement machine, and that those in the Government responsible for negotiating settlements are understandably eager to conclude such agreements. Hence, it seems unwise to allow administrative settlements, negotiated in private and not subject to judicial scrutiny, to peremptorily extinguish any valid claims that might be made in later contribution suits. Persons seeking fair reimbursement after paying an excessive damage award are at least entitled to have their rights determined impartially. This is fundamental in our society, and in my view is realized only when a judge, not an administrative agency, has the final say on the terms of a settlement.

The extension of contribution protection to administrative settlements is also flawed on constitutional grounds. It is a truism that the due process requirement of a fair tribunal applies to administrative agencies as well as to courts. *Withrow* v. *Larkin*, 421 U.S. 35 (1975). I am troubled, again, by the ability of the executive branch settlement negotiating team to meet this unyielding constitutional standard. Consider, too, how fair a process can be that decides the fate of claims—future contribution suits—that are not even before it. Finally, the cutoff of contribution rights here cannot meet the stricture in *Yakus* v. *United States*, 321 U.S. 414 (1944), that summary action of an administrative agency resulting in a deprivation of rights must be subject to later judicial review.

A separation of powers issue is also evident here. To give the power to extinguish independent legal claims is to erode the structural separation of powers and the "carefully defined limits on the power of each branch." *INS* v. *Chadha*, 462 U.S. 919, 958 (1983). Of course, the branches of Government are not "hermetically" sealed from one another. *Buckely* v. *Valeo*, 424 U.S. 1, 121 (1976). Nonetheless the separation of powers principle requires that each branch maintain its separate identity. Id. at 120-124; *INS* v. *Chadha*, 462 U.S. at 951. Although this Senator supports the conference report as a whole, I must, as a matter of conscience express my opposition to this particular provision.

SECTION 127—LIABILITY LIMITS FOR OCEAN INCINERATION VESSELS

Mr. President, some mention should also be made of the interplay between these amendments and the Marine Protection, Research, and Sanctuaries Act [MPRSA], which they amend.

Section 127(d) of SARA amends section 106 (33 U.S.C. 1416) of MPRSA to eliminate any preemptive effect which it might have and, thus, make it consistent with the letter and spirit of CERCLA. This action is necessitated by the U.S. Supreme Court's decisions in Milwaukee versus Illinois and Seaclammers versus Middlesex County. These two decisions, taken together, construe the MPRSA to displace Federal common law, interfere with other remedies under State and Federal law, and potentially preempt State law as well. Their effect is to leave injured parties with no available remedy, which is an outcome never intended or contemplated by the Congress in enacting the MPRSA or the other environmental laws, such as the Clean Water Act.

This amendment overturns Seaclammers. It also does more.

New subsection (h) states affirmatively that the savings clause extends to the entire act, not just the section. Apparently this type of drafting precision is now necessary because of the rigidity of the construction which the Supreme Court places on the use of words such as "section." It would be simpler, and preferable, if the Court would construe such words as the Congress intended, as reflected in documents such as committee transcripts. But apparently, for the moment at least, every misstep by the Congress in this area is, according to the Supreme Court, to result in a plunge into an abyss. In that regard, Mr. President, I would like to have appended to my remarks a statement which was inserted in the RECORD previously on this subject. I hope that it might provide guidance to the courts on this general subject, as well as some encouragement to more reasonably construe congressional enactments.

In any event, subsection (h) is to express our intent as best we can, that State law is to be undisturbed by MPRSA. Similarly, in cases on noncompliance, other Federal laws, including maritime tort law or common law, are also undisturbed.

The bill also, by adding new language to section 107(h) of CERCLA, assures that physical damage to the property or some other proprietary interest of the claimant is not an essential element of a right of action. Individuals who suffer a loss have a right of action. That the injury which caused that loss was to the property of the public or to another is irrelevant. The test is whether or not the claimant experienced a loss.

Mr. President, it is my custom to avoid issues which are in litigation, not embrace them. But to every rule there are exceptions.

There is now pending before the Second Circuit Court of Appeals a review of the decision by the U.S. District Court for Vermont in the case of *Oulette* v. *International Paper*, 602 F. Supp. 264 (1985). One of the issues in that case is whether the enactment of the Federal Clean Water Act extinguished rights of action under other laws, including Vermont common and statutory law. Why the question should arise at all is a puzzle to this Senator since the language of the Clean Water Act is quite clear on the subject. Section 505 of the Clean Water Act establishes the right of a citizen to sue to enforce the provisions of the act, then states explicitly that other rights are undisturbed. Subsection (e) states that—

> (e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any affluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

Despite this clear language, at least one court has held that the act extinguishes some State common law. That court is the Seventh Circuit Court of Appeals, which made such a finding in *Illinois* v. *City of Milwaukee*, 731 F. 2d 403 (1984).

My purpose here is not to review the details of these and other court decisions, but to make available some legislative history which I hope will be helpful in indicating just what was intended by the Congress. This legislative history includes transcripts from the markups during 1970 and 1971 of the Clean Air and Clean Water Act.

The citizen suit provision was first adopted in the Clean Air Act and then, about 1 year later, incorporated in the Clean Water Act. Therefore, to completely understand what the members of the Committee on Public Works and the Congress intended it is necessary to review transcripts and other documents relating to both laws.

The subject of preempting or displacing rights available under other laws arose for the first time on June 4, 1970, at a meeting of the Subcommittee on Air and Water Pollution. The subcommittee was meeting to mark up what was later to become the Clean Air Act. Included in the bill before the subcommittee was a proposal to authorize citizens to file suit to force compliance with pollution control requirements. As the subcommittee members were discussing this proposal, Senator Howard Baker offered an observation and expressed a fear as follows:

> Senator BAKER. The only question is whether or not you have access to the Federal courts under one of the jurisdictional requirements for diversity or jurisdictional amount or one of the other specialities. So we aren't creating a brand new cause of action. We are, rather, modifying one that already exists.
>
> I think that brings to mind something that we should make sure we fully understand; that is, that we don't limit and circumscribe the right of citizens individually and as a class to do what they can already do by spelling it out here in this statute. If we start spelling out each detail here, the court is going to hold that we have obliterated everything else that the common law created. (Transcript Roll 15, p. 1687.)

The discussion then moves on to other subjects, but a minute or two later, Senator Baker suggests that the bill be amended.

> Senator BAKER. I think you could also put in a saving clause to the effect that:
>
> "Nothing contained in this act shall abridge or abrogate any pre-existing right by statute or common law."
>
> I think the courts would permit that. (Transcript Roll 15, p. 1692)

The transcript shows no direct response to Senator Baker's suggestion at this time, but on July 29, 1970, the subcommittee was meeting again to markup the proposed Clear Air Act. Senator Baker was absent, but there was a discussion of the meaning of the savings clauses:

> Senator Cooper. If I may ask another question . . . what would be embraced in equitable relief? (Would it affect) any personal rights you may have as a person, for damages.
>
> Mr. Jorling. The intention in the language, as I understand it, is to specifically avoid any damage provisions. It is strictly an equitable provision to abate, to halt, to prevent this violation from occurring, and does not address itself to either physical or monetary damages in any way. It is strictly an action to achieve this abatement, if found, of a violation of the schedule of compliance and emission stand (sic) or emission requirement.
>
> It does not go to the issue of damages at all, and that comes out, I think, of the whole philosophy of the act, and that is, it is very difficult for anybody to prove personal or monetary damage resulting from the effects of air pollution.
>
> Mr. Billings. We have reserved the rights of citizens under other common law to seek damages for pollution, if such damages occur. (Transcript Roll 16, p. 0080-81.)

The two staff members responding to the questions from Senators Cooper and Spong were Leon G. Billings and Thomas Jorling. Mr. Billings, who was not a lawyer, was staff director of the Subcommittee on Air and Water Pollution and Senator Muskie's principal aide. Mr. Jorling, a lawyer, was minority counsel to the full committee and the principal aide to the Republican members.

The transcripts contain one further reference to the savings clause, which is a statement by Senator Spong of Senator Bakers's original intent. The members were discussing whether citizens should be required to provide notice to administrative agencies as a precondition to filing suit. There had been earlier subcommittee discussions, and the members were attempting to refresh their recollections, with Senator Muskie observing at one point, "* * * we have gone through this once before. I forget just how we resolved it." (Transcript Roll 16, p. 0088.) Senator Spong recalls the following:

> Senator Spong. It is coming back to me now. Senator Baker's concern was that we could be taking a right away from a citizen . . . to go into court . . . . (Transcript Roll 16, p. 0090.)

Following subcommittee and committee markup, the bill was considered by the full Senate on September 21, 1970. As it had in the earlier stages of the legislative process, floor attention focused almost exclusively on the consequences of conferring on citizens an explicit right to sue to enforce pollution laws. Senator Philip Hart of Michigan defended the provision, which was by then section 304 of S. 4358, as "one of the most attractive features of the bill," adding that it would not result in a proliferation of litigation.

> The bill makes no provision for damages to the individual. It therefore provides no incentives to suit other than to protect the health and welfare of those suing and others similarly situated. It will be the rare, rather than the ordinary, person, I suspect, who, with no hope of financial gain and the very real prospect of financial loss, will initiate court action under this bill.
>
> (Legislative History of the Clean Air Act Amendments of 1970, Congressional Research Service, Library of Congress, Washington, D.C., Volume 1, p. 355.)

Senator Hart's remarks, together with the transcripts of the markups, make it clear that Senators believed that, in enacting the Clean Air Act, they were supplementing remedies available to injured parties, not supplanting them.

The House bill contained no comparable citizen suit provision. But with some changes in the Senate language, the House receded. The last sentence of the statement of managers on part of the House in explanation of the section 304, the citizens suit provision, was the following:

> The right of persons (or class of persons) to seek enforcement or other relief under any statute or common law is not affected. (Id. at p. 206.)

During consideration of the Clean Water Act the following year, much less attention focused on the citizens suit provision. That is due, in part, to the fact that the version contained in the Clean Water Act was identical to what had been enacted in the Clean Air Act, except for changes required because of differences in terminology—for example, discharges of water pollution effluent vice emissions of air pollution).

At this time several bills were pending in the Congress to expand the rights of citizens to file class action suits. Therefore, some discussion concerned itself with the issue of whether the parenthetical phrase "or class of persons" might have the effect of expanding the then current law. On September 21, 1971, the Committee on Public Works held a markup of the proposed Clean Water Act amendments which had been reported by the Subcommittee on Air and Water Pollution. During the review of the citizen suit provision, the following exchange took place:

> Senator Cooper. Do you want to tell us against whom action may be brought and for what causes and then exceptions? Then on page 115, subsection e, you add, "Nothing shall restrict any right which any person (or class of persons) . . .". Is the right of a class of persons only available under the conditions set out in e, in other words, when they have a right under State statute of common law?
>
> Mr. Meyer. Well, it is a parenthetical phrase.
>
> Mr. Jorlang (sic). The intention is, as in the Air Bill, to avoid in this provision any of the complexities that are raised with cross-action (apparently class-action) suits on the basis that this is a provision that authorizes only equitable relief. There is no provision for the recovery of damages nor for requirement of showing of damages.
>
> The provision, subsection (e), provides merely that this section, the authorization granted in this section, in no way affects any rights a person has, whether or not acting alone or as a class, under any other law, statutory or common, for relief against a pollutor (sic). This would normally mean that if there are some damages, standard common law damages, and a person would like to join with a class of people that suffered similar damage, this does not prevent them from doing so. (Transcript Roll 17, p. 1617-18.)

This understanding of the savings clause was also reflected in the committee report accompanying S. 2770, which explained what was to become section 505(e) as follows:

> It should be noted, however, that the section would specifically preserve any rights or remedies under any other law. Thus, if damages could be shown, other remedies would remain available. Compliance with requirements under this act would not be a defense to a common law action for pollution damages. (Legislative History of the Water Pollution Control Act Amendments of 1972, Congressional Research Service, Library of Congress, Washington, D.C., p. 1499.)

The issue of what impact, if any, the enactment of the Clean Water Act would have on the availability of other statutory or commond law remedies was apparently not discussed further. However, it would seem that further discussion was unnecessary. From the first mention of the issue by Senator Baker during the subcommittee markups of the Clean Air Act to the last recorded mention of the subject in the Senate Public Works Committee report on the Clean Water Act the attitude and intent of the members was remarkably consistent. Not once was there ever any doubt as to what they intended or disagreement as to its correctness. In every discussion of the matter it was clear that all other rights—whether State or Federal, statutory or common law— were to be preserved.

The clarity of the repeated statements to this effect and the unanimity of agreement on the proposition made further discussion meaningless.

I might observe that this Senator was a Member of the other Chamber when the Clean Air Act amendments were adopted and a member of the Senate Committee on Public Works when the Clean Water Act amendments were considered and approved. Speaking only for himself, this Senator can recall no occasion on which it was ever suggested at the time of their consideration that the enactment of the Clean Water Act or the Clean Air Act would diminish the rights of injured parties. On the other hand, I can find a record replete with unequivocal statements by Members and staff that these rights were to be preserved, combined with clear indications of affirmation and agreement by other Senators and Representatives.

In the face of a record such as this, it seems impossible for any reasonable person to conclude that the Congress intended by the enactment of these laws to provide the public with less protection from personal injury than it had before. Such a conclusion is directly at odds with every statement made during the long and detailed consideration of these laws. Nevertheless, some persons apparently have reached such a conclusion in the past. I would hope that in light of the information I have just provided, they will reconsider and correct earlier decisions.

Mr. President, the complete transcript to which I have referred are available through the documents room of the Committee on Environment and Public Works should any person wish to review them.

TITLE III—COMMUNITY RIGHT TO KNOW

Mr. President, I would like to continue my commentary with a few remarks about the Community Right-to-Know provisions of this bill. I was privileged to serve with two of my colleagues, Senator Bentsen and Senator Lautenberg, as Senate representatives to a subgroup of the Superfund Conference that developed the conference substitute language for this title.

These provisions were developed in large part as a result of the terrible disaster in Bhopal, India, at which deadly fumes of methyl isocyanate, a pesticide, intermediate, were released accidentally into a sleeping community, resulting in death or injury to thousands of people. A strong worker and community right-to-know movement already was developing in this country. The Bhopal disaster focused public attention on the fact that extremely dangerous chemicals are present at chemical manufacturing plants and other facilities in communities all across America. This title of the Superfund bill recognizes a basic fact: that citizens have a right to know about these chemicals—what they are, where they are, and how much of them is present.

But the bill goes beyond concern about accidental releases of these toxic and hazardous chemicals. It also recognizes that the public has a right to be informed about routine releases of these chemicals to the air and the water and the land. Just as the public has a right to know about releases that might happen as a result of an accident, the public also has a right to know about releases that do happen every hour and every day that some manufacturing facilities operate.

The Bhopal disaster also focused public attention on the inadequacy of disaster planning around facilities where large amounts of toxic and hazardous chemicals are used and stored. The bill deals with this issue by requiring the establishment of appropriate emergency plans in communities where certain dangerous chemicals are used or stored.

Mr. President, I would like to mention a few particular provisions of this title.

One of the most difficult issues that confronted the conferees was the question of trade secrets. There is no question that legitimate trade secrets exist in the chemical industry. Sometimes an advantage gained by use of a particular chemical compound in a complex fabrication process represents the competitive edge that company has over others.

But it is equally true that the primary purpose of a community right-to-know law is to inform the public about these chemicals. Any concessions made to trade secret concerns must be only as broad as necessary to protect a legitimate trade secret.

In that regard, one of the most important provisions of this bill is the requirement that any person who claims the specific identity of a chemical subject to reporting must substantiate that claim at the time the claim is made. This requirement for substantiation consistent with the Senate bill. The showings the claimant must make at the time the trade secrecy claim is submitted are set out clearly in the statute. The Environmental Protection Agency must determine whether the submitted justification for the claim, assuming its veracity, meets the substantiation requirements of section 319(b).

Procedures are set out for persons to petition the Agency to release trade secret information. These procedures do not shift the burden of proof to the petitioner. Instead, they provide a mechanism by which a citizen can require a trade secret claimant to document the legitimacy of the trade secret and the veracity of the claim with respect to the elements of substantiation discussed above. Thus, for example, a claimant may support a trade secrecy claim, in part, by asserting as fact that the chemical is a secret catalyst that allows a certain incremental gain in production efficiency, and that disclosure that the chemical is present at the facility would reveal this fact and would "cause substantial harm to the competitive position" of the claimant. Upon challenge by the Administrator in response to a petition, the claimant must document these assertions with appropriate chemical engineering and market data. The bill contains appropriate penalties for false representations.

Of course, the Administrator is not required to wait for a petition in order to require documentation of the legitimacy of a claim.

The conference substitute also contains special provisions that assure disclosure of trade secret chemical identity to States and, on the basis of a confidentiality agreement, to health professionals. State health professionals do not have to execute confidentially agreements because of their position as employees of State government.

It is not intended that the confidentiality agreement create a significant burden for the health professional. The health professional is in the best position to judge whether knowledge of specific chemical identity is needed to fulfill his or her professional responsibility, the facility owner or operator should not substitute his or her judgment for that of the health professional.

Similarly, the confidentiality agreement must not limit unduly the use of the information by the health professionals. For example, health professionals routinely consult with one another about symptoms, medical findings, and the treatment of disease. A confidentiality agreement should not inhibit such consultation. Similarly, health professionals often present lectures or publish scientific papers about their research and clinical experience. In most cases, it should be possible to report medically important facts about a specifically identified chemical without disclosing a legitimate trade secret. For example, it is the presence of a particular chemical at a particular facility that is the trade secret, not the relationship between the chemical and any observed clinical effects. Therefore, health professionals should be free to report medical information about such a chemical while preserving the trade secret by not naming the facility at which the chemical is used.

Subsection 313(d) of the bill authorizes the Administrator to list chemicals for the purposes of reporting under that section on the basis of various health and environmental effects. With regard to chronic human health effects, chemicals may be listed if they cause or can reasonably be anticipated to cause certain "serious or irreversible" human health effects. Similarly, chemicals may be listed if they cause or can reasonably be anticipated to cause "significant" adverse acute effects. An effect does not have to be life-threatening or debilitating to be considered serious or significant, nor does it have to affect the general population. In particular, the Administrator is to consider adverse acute effects on sensitive individuals.

The Administrator should recognize that he or she is not regulating a chemical by listing it under this subsection. There is no requirement to perform risk assessments or to balance the benefits and costs of a decision to list. The purpose of this section of the bill is to inform the public which can be accomplished without very great burden on the reporting facility. Therefore, a decision to list a chemical for the purposes of reporting under this section can and should be made on the basis of less scientific evidence than would be needed to regulate its manufacture, use or disposal.

This section also requires the Administrator to computerize the data reported on the required forms and to make these data available to the public by various means. Successful implementation of this requirement is vital to the basic purpose of the program. The data should be managed in the computer in such a way as to allow a wide variety of analyses. For example, it should be possible to retrieve data not only about individual facilities, but also aggregate data organized by type of chemical, type of effect, geographic location, company name, etc., as well as combinations of these parameters.

Where the specific identity of a chemical is a trade secret, the Administrator must identify its adverse health and environmental effects in responding to requests for information. This linkage is needed because it is usually impossible to research the toxicological literature on the basis of a general class of category name. In order to make it easier for the lay public to understand, the Administrator also should identify the adverse effects of toxic chemicals for which specific chemical identity is not withheld. For purposes of listing chemicals and identifying adverse effects, the Agency may rely on structure-activity relationships as well as test data on individual chemicals.

In implementing this section, the Administrator should keep in mind that its primary purpose is to inform the public about routine releases of toxic chemicals. The computer database must be managed in such a way as to maximize its accessibility and utility to the public.

I pay particular tribute to my colleagues who were the conferees from the Senate and particularly my friend and colleague, Senator BENTSEN, all of the others, Senator MITCHELL was one of those, who worked long hours in the effort, and Senator LAUTENBERG, from New Jersey. There were others. I will do injustice to them by not naming them, I am afraid. But all of our conferees did a splendid job and it took us to the point where we could bring this conference report to the Senate.

I yield to my friend from Texas.

Mr. BENTSEN. I thank my distinguished chairman. In the allocation of time on this side I reserve 7 minutes to myself, 1 minute to the distinguished senior Senator from New Jersey and 5 minutes to the distinguished junior Senator from New Jersey.

Mr. President, this legislation as my chairman has stated has been the result of a long and very arduous task carried on by the Senate conferees and the House conferees. It was, I think, one of the most difficult and most meticulous and detailed conferences I have ever seen insofar as the programmatic parts of Superfund were concerned and in turn trying to get an equitable sharing of the burden of paying for the cleaning up of these sites by the conferees from the Finance Committee. I had the dubious distinction of serving as a conferee for two of the committees having jurisdiction in this regard. I think it was an education that took place as we proceeded in the development of the statement of the conferees.

Defining an appropriate taxing approach to fund the Superfund has been a compelling and critical task. Over the last 3 years, we've had a lot of ups and a lot of downs. We've had endless meetings, endless negotiations. We've learned an enormous amount in the process.

I think that the main lesson of the last 3 years is that Superfund is a societal problem. When the first Superfund Program was created 6 years ago, the prevailing belief in the Congress was that the chemical and oil industries were primarily to blame. Those industries were the dirty industries. The polluters. Those industries were endangering our health and our children's health, destroying the environment, and leaving a legacy of hazardous waste to generations to come. The Congress believed that it was easy to draw a nice, bright line between "good" industries and "bad" industries: the chemical and oil industries were bad, and all other industries were good. High-Tech industries were good; food companies were good; manufacturers were good; steel companies were good.

Unfortunately for those whe seek simple answers, Mr. President, this reauthorizaiton process has shown that it just isn't so. I would guess that by now many of my colleagues have seen the lists of companies that have been identified as contributors to Superfunds sites. Take the Stringfellow site in California, one of the worst hazardous waste dumps. Let me read off some of the names for that site:

Alcoa;
American Electronics, Inc.;
Automation Industries;
Borg-Warner Corp.;
Briggs Manufacturing Co.;
Calif. Electroplating;
Calstrip Steel Corp.;
Carrier Corp.;
Firestone Tire and Rubber;
Ford Aerospace and Communications;
General Foods Corp.;
McDonnell Douglas Corp.;
Northrup Corp.;
Purex Corp.;
Teledyne; and
Bell Wire Co.

The list goes on and on. There are hundreds of names on the list. Every conceivable kind of company is on the list—computer companies, food companies, steel companies, service business, trucking companies agriculture companies, aerospace companies, electric companies, etc. etc. sure, there are some oil and chemical companies, but the overwhelming majority of companies on the list have nothing to do with producing oil or chemicals.

This tells us one simple thing, Mr. President: while chemical and oil companies may have produced many of the hazardous substances that have found their way into Superfund sites, industries of all types have been responsible for actually dumping the substances into the sites. The dumping may have been done by a plastic manufacturer using hydrocarbons in its manufacturing process. Or it may have been done by a computer chipmaker using solvents to etch the chips. Or it may have been done by a food processor manufacturing packaging for its food. Companies of all stripes have been responsible for dumping hazardous waste.

Information recently compiled shows that the chemical industry manages 99 percent of its waste on site. Let me repeat that Mr. President: 99 percent of chemical industry waste is managed on site. Hazardous wastes managed on site cannot become a Superfund site, and that's for a very basic reason: liability for the cleanup of such waste is not in dispute. This is a point often lost in the debate over how to pay for Superfund. The Superfund Program has nothing at all to do with Superfund sites for which liability can be pinned on a private party; that party has to pay. The Superfund Program only has to do with so-called orphan sites—sites that are not owned and managed by any one company and for which liability is unclear. And the chemical and oil industries have nothing more to do with orphan sites than any other industry.

What we have before us today is a tax title that recognizes the societal nature of the Superfund problem. Instead of loading the tax for the new, expanded program on the oil and chemical industries, we recognized the facts and adopted a broad-based tax to spread the burden throughout the economy. This new broad-based tax will be levied at a rate of 0.12 percent on corporate profits. To measure corporate profits, we have adopted the alternative minimum tax base contained in the tax reform bill. Small companies will be exempt from this tax, but other than that, there are no exceptions—all industries will pay.

We can quibble about the precise type of broad-based tax that would be best for the program. Last year this body overwhelmingly approved a broad manufacturers' excise tax for the program. I authored that tax with Senator WALLOP, and I still think it is a fair solution, and one that bears a close relationship to the problem. But the House would not approve that approach, and so we sought another approach. The corporate profits tax that we have finally included in the package may not be perfect, but it serves the purpose of spreading the Superfund burden broadly through the economy, and I support it.

Besides the broad-based tax, the package also extends the tax on chemical feedstocks, at the old rates. I certainly would have preferred to drop the feedstock tax altogether—and I believe that that would have been the fair thing to do—but I also recognize reality. I was willing to go along with the extension of the tax if there were no rate increases. I might mention that this is a very major departure from the four-fold increase in the feedstock tax that the House passed 2 years ago, and also a major change from the $800 million increase the House passed last year. The unfortunate fact is that taxes on chemical feedstocks merely tend to push our chemical industry and their closest customers overseas. If you're a manufacturing company and you purchase large amounts of chemicals for your business, you'll think twice about setting up business in this country if you have to bear the burden of the feedstock tax. You'll set up abroad and purchase chemicals that aren't taxed. And you'll export your finished products to this country free of the feedstock tax. It would have been a step backward if the feedstock tax had been increased in the face of our country's ballooning trade deficits.

A major victory for the Senate in this package was the rejection of a so-called waste-end tax—a tax on the generation of hazardous waste. The House bill sought to raise $2 billion from such a tax. The tax would have been an administrative nightmare for the IRS, as well as an unreliable and declining revenue source. It probably would have proven to be a stimulus for midnight dumping, and a further drag on the competiveness of several U.S. industries, particularly the chemical industry. My colleagues and I on the conference flatly rejected the idea of a waste-tax, but the House negotiatiors persisted in promoting this tax until the last minute. They finally concluded the issue yesterday, and the overall package quickly came together.

Our tax package, Mr. President, also contains taxes on oil. Under our compromise, the rate will be 8.2 cents per barrel on domestic production and 11.7 cents on imported oil and imported petroleum products. Companies that import oil don't care for this compromise. I understand that, and I regret that. But we have protected domestic producers in the bargain. Although domestic producers will have to pay 8.2 cents per barrel to the Government, they should find their prices rising by that much or a few pennies more. I would not have been able to support a conference report that attempted to squeeze significant money out of the battered domestic oil industry, and I think we have put together a package that protects the industry.

All things considered, Mr. President, the tax package that we have put together is a good package deserving of the strong support of the Congress. I believe it deserves the support of the President of the United States. Although it still singles out the chemical and oil industries for some special treatment. It also establishes a broad-based tax, and that is the real achievement of the bill. This bill also is fair to the State I represent. It is estimated that companies in my State of Texas pay about 49 percent of the revenues collected by the feedstock tax. That means that my State, which has only 2 percent of the Superfund sites, shoulderly a hugely disproportionate share of the cost of the first 5-year cleanup program. Enactment of a waste-end tax as in the House bill would have exacerbated the problem since Texas companies would have paid about 46 percent of that tax. Under this conference report, however, Texas will pay its fair share of the costs of the program. But not more than its fair share. It will pay only its proportionate part of the broad-based tax. Although Texas companies will continue to be subject to the feedstock tax, that tax will represent only about 16 percent of the expanded fund. In addition, the tax on imported oil will actually represent a benefit for Texas oil producers.

Mr. President, in this bill we have firmly established the principle that hazardous waste is a societal problem. I don't harbor any illusions that we will not be back on this floor in 1991 debating the Superfund again. At that time, however, I hope the debate will center on the level of the funding, rather than on whether to punish one or two industries.

What we are talking about is a revenue package of $8½ billion compared to the $1.6 billion that was originally passed compared to the little in excess of $5 billion that was talked about by the administration and some $11 billion by the House.

It is a good compromise. It is a good bill. I strongly urge its passage.

Mr. President, the provisions of this bill to alter the programmatic provisions of the Comprehensive Environmental Response, Compensation and Liability Act is the result of several years of activity by the members of the Committee on Environment and Public Works including a conference that lasted about 6 months. It is a tribute to the skill and endurance of my colleagues on this committee particularly the chairman, Senator STAFFORD, and Senator MITCHELL who was the pivotal negotiator of one of the most difficult provisions of the bill—clean up standards.

These amendments should strengthen the Superfund law. They should improve the Superfund law. I believe we are handing the Environment Protection Agency a better law, a law that will improve their ability to respond to hazardous waste sites, a law that should facilitate settlements between responsible parties in the Federal Government completing cleanup actions at the many almost 900 listed sites around the country. However, this is a complicated, very difficult area to judge the outcome of the difficult policy decisions that we had to make in this bill.

Six years ago, when we first enacted Superfund, we believed that we were putting in place a law that would allow the Federal Government to respond quickly and expeditiously to a wide variety of releases of hazardous substances and, in particular, to create a program which would clean up numerous abandoned hazardous waste sites around the country. We gave the President sweeping authority to respond to virtually any type of release of virtually any harmful substances whether it is released or only threatened to be releases. We put in place a legal regime of strict liability which we believed would encourage responsible parties to rapidly resolve their responsibilities in order to avoid potentially enormous litigation costs, potentially large penalties associated with the failure to respond to site cleanup activities under a regime that largely is weighted toward the Federal Government. We supplied a superfund which was designed to be available to the President to instantly respond where necessary and to handle those situations where responsible parties were unavailable for cleanup action.

In the last 6 years we have learned that this process is not as easy as we thought it would be in 1980. While in my view and many others the program was not initiated in the most vigorous and effective way, it is equally true that it would have been a complicated program to initiate in any event. It was clear very quickly that responsible parties were not going to be easily placed in a position of settling on waste site cleanup responsibilities. The process of identifying waste sites was complicated. The process of determining which wastes were at sites was complicated. The process of trying to assign responsibility to various waste generators was complicated. And the threat that one or two or three large corporations would be held jointly and severally liable for costs far in excess of what their contribution to a waste site would be made it certain, in retrospect, that the attorneys for virtually every company that was involved in a waste site would try to assure that his company would be responsible for no more than what they could reasonably be expected to contribute to a site. If this meant bringing in large numbers of other responsible parties, of very small contributors, holding them in the litigation until the very end, this strategy would be followed.

At the same time, because of the serious questions that had been raised about the handling of the program at the Environmental Protection Agency in its early years, the Federal Government was faced with very difficult decisions about which cases it should settle and which cases it should take to court. On the one hand, if it settled a case, Congress was critical of the agreements that were made. On the other hand, the Federal Government attorneys did not want to take weak cases to court if they thought that they would be unable to prevail on critical legal issues associated with the case which would establish legal precedents with regard to all the other cases that they needed to pursue.

Consequently, this process has generated a seemingly endless litany of iterations between the threats of litigation and attempts to settle at waste sites while the actual cleanup activity has been delayed and delayed and delayed. Moreover, the judgments that had to be made about what types of remedial actions would be taken at various waste sites significantly influenced the speed with which cleanup actions could be taken and the resolution of the litigation. If the cleanup action was to be relatively quick and inexpensive, action could be taken more easily and agreements could be reached about who would pay the cost. As technologies got more complicated, it became clear that these costs would be harder to resolve. Everyone had a different view of what constituted a cost-effective cleanup. Everyone had a different view of what the remaining liabilities should be after agreements were reached on the technological solutions to various sites.

Citizen groups were concerned that their interests were not being well protected by the Federal Government. Citizen groups were concerned that the choice of remedy would be one which eliminated potential future risks. Potentially responsible parties were concerned that they would not be paying for a remedy which cost far more than was necessary to protect public health. The Federal Government was concerned that its liabilities in the future, if the remedy failed, would be borne by the responsible parties and not by the Federal Government. Given this inherent set of conflicts, it is no wonder that the Superfund Program was unable to respond as quickly to this problem as many who crafted this legislation in 1980 believed it should.

When we approached this conference, these were the problems that confronted us. We wanted to try to generate changes to the Superfund law which would make it work better, faster, and would make certain that it was equitable to everyone concerned. We found that these decisions were more difficult to make than we had anticipated. The bills were vastly different in many respects. To try to make the process workable, we had to separate the bills into many issue areas. We had to make difficult policy decisions in each of these areas. Many of these resulted in complicated new requirements. The cleanup standards provisions provide a typical example.

This section provides a comprehensive approach to remedy selection at Superfund sites. This provision accommodates our desire to develop more permanent, effective remedies at sites, while maintaining the EPA Administrator's flexibility to select the most appropriate remedy at a specific site. There are four basic requirements in selecting remedial actions. These actions must:

Protect human health and the environment;

Be cost effective;

Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

Meet applicable and relevant or appropriate standards, requirements, criteria, or guidance under Federal or State environmental laws.

We intended to express a strong preference for the permanent reduction of the mobility, toxicity, or volume of hazardous substances through the use of treatment.

In making remedy selection decisions at a specific site, the Administrator should, at a minimum, evaluate the various alternatives on the following factors: Cost, reliability, and long-term effectiveness, residual public health risk, implementability, and short-term implications.

This section establishes the baseline level of protection for all remedial action selected and approved under Superfund. Any standard, requirement, criteria, or limitation under Federal environmental statutes or any more stringent State standard, requirement, criteria, or limitation which was duly promulgated pursuant to State law, must be met at Superfund cleanups if such requirement is legally applicable or relevant and appropriate under the specific circumstances of the release. The Administrator may waive those requirements if certain limited, enumerated conditions are met.

Maximum contaminant level goals must be attained at the point of use of the drinking water where such goals are relevant and appropriate under the circumstances of the release. Where the ground water is contaminated, the appropriate ground water standard will be used to determine the level or standard of control. Remedial actions involving water which is not used, nor projected to be used, as a drinking water source need not consider these goals.

The section requires the Administrator to meet the requirements of State facility siting laws, except where they would effectively result in the statewide prohibition of land disposal. Any substantive objective criteria of State siting laws should be applied to Superfund cleanups in the context of the Remedial Investigation/Feasibility Study and does not require a siting board review or other administrative process.

The section also provides for the selection of more permanent remedies. It expresses a strong preference for remedial action in which a principal element is the permanent and significant reduction of the volume, toxicity, or mobility of the hazardous substances. It requires the utilization of permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. These requirements are not to be taken lightly; in the future, remedies will be more permanent. However, this language should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site.

This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies are presumed to be appropriate cost effective remedial actions and should be selected to the maximum extent practicable. In determining whether these remedies are practicable, the Administrator may take into account technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria.

Given sufficient resources and implementation time, several technologies, independently or in combination, may achieve any level of protection or permanence. This section does not require the expenditure of huge sums of the limited Superfund moneys to treat each and every bit of contamination. Rather, we intend that the Administrator use permanent remedies and alternative treatment technologies as the reference point and evaluate all remedies in comparison to the protection and cost effectiveness provided. Where remedies involving permanent solutions and alternative treatment technologies are not practicable, another remedy which is cost effective and satisfies the other requirements of this section may be chosen. While this section sets forth strict requirements, it does not direct the selection of overly costly remedies where alternative cost effective remedies provide comprehensive protection of public health and the environment.

This lengthy section replaces a small paragraph of the current law. Virtually every word of the section was developed with great care and scrutiny. As I indicated earlier, Senator MITCHELL focused much of his excellent talent to the crafting of these provisions. Where we had to make choices, we made them with an understanding of policy choices that were available to us.

We would make all the same decisions again. These decisions were made for clear policy reasons.

It is my hope that as Congress conducts oversight on this legislation, it will recognize that this law has become far more complicated than it was, that it is not merely the will of the administration that will determine how expeditiously the program will return to full activity. This is a time for Congress and the administration to work together to get this much needed program going again. We have deliberated these questions long enough. We have made the tough choices that have to be made. Now we should work together—the Federal Government, the States, the industries, the citizens to get these sites cleaned up.

Mr. President, I reserve the balance of the time I allocated to myself. I yield 5 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER (Mr. GRASSLEY). The Senator from New Jersey has been yielded 5 minutes.

Mr. LAUTENBERG. Mr. President, I thank the ranking minority member of the Environment and Public Works Committee and, of course, the distinguished chairman of the Committee on Environment and Public Works.

Mr. President, I rise today with some emotion and a feeling of enormous gratification. Today, the Senate is finally turning to consideration of the conference report on the Superfund reauthorization bill. I hope it will mark the end of the debate on Superfund and the beginning of a new era of environmental protection.

Mr. President, I was privileged to join as a member of the Environment and Public Works Committee in the spring of 1984, when a succession of events resulted in the committee to temporarily be expanded during the 98th Congress. I immediately sought membership on the committee, because of the importance of its jurisdiction to New Jersey, and, indeed, the entire Nation. I was on the committee only a short time when we turned to the Superfund renewal bill. Since that time, enactment of an expanded and strengthened Superfund bill has been my top legislative priority.

Mr. President, this has been a long and hard process. Toxic waste clean up is a technologically complex challenge and a politically charged issue. In the aftermath of enacting the original Superfund Program in 1980, we have applied significant resources in locating abandoned toxic waste sites and devising remedial action plans adequate to the task before us.

The Environmental Protection Agency currently lists 900 sites on the national priority list for clean up under Superfund; 99 of these sites are in New Jersey. Projections by the Office of Technology Assessment and EPA indicate that this list will grow significantly as we proceed with this effort. Cleaning up these sites will be expensive. It will require assigning liability to the parties who contributed to the creation of these sites. And, it will require a financial contribution from a range of parties, some of whom may not have contributed directly to our toxic waste problems, but all of whom have benefited from the products produced by the chemical and petroleum industries.

As a conferee, I would like to take this opportunity to thank and commend the able chairman of the Environment and Public Works Committee, Senator STAFFORD, and the ranking minority member, Senator BENTSEN for their outstanding leadership and for making sure that this task was completed. I also want to thank the Senator from Maine, Senator MITCHELL, for his support and guidance. The leadership of the chairman and ranking minority member and their commitment to environmental protection made the difference in many tough negotiations and contentious issues.

On a more personal note, I want to acknowledge their consistent cooperation in accommodating my concerns about the Superfund Program. Senator STAFFORD made it possible for me to hold two field hearings on Superfund in New Jersey, one in 1984 on Federal-State issues and one in 1985, after the Bhopal tragedy, on community-right-to-know issues and emergency response capabilities. These hearings resulted in the adoption, by the committee, of measures I sponsored in response to information gathered at these hearings. Their willingness to bring the committee to New Jersey gave our State a special voice in shaping a bill responsive to New Jersey's needs.

With the help and work of Senators STAFFORD and BENTSEN, and many other conferees, we bring before the Senate a conference report that represents a significant step forward in our Toxic Waste Cleanup Program. This is legislation with tough, new cleanup standards. Radon mitigation. A leaking underground tank program. Citizen suits.

The conference report also contains a community-right-to-know program, which I introduced in 1985, and to which I, personally, devoted much effort. In my State and others, it will be critical to communities—in alerting them to the dangerous chemicals present in their communities, and in laying the foundation for effective emergency response planning.

The right to know means public information about what hazardous substances are being stored and released into the environment in our communities. It means planning for emergency releases before they happen. It means that our citizens and our emergency response personnel will be safer and better prepared for the threats from chemical releases. It means that this Nation will not tolerate Bhopal- or Chernobyl-type tragedies.

Mr. President, this bill also establishes, for the first time, a comprehensive Indoor Air Research and Demonstration Program within EPA. This program, detailed in title IV, will focus on the problem of radon gas contamination in American homes.

EPA and the Centers for Disease Control have linked radon, a known carcinogen, to as many as 20,000 lung cancer deaths a year, placing it second only to cigarette smoking. The need to act on the problem of indoor radon is clear. The provisions in this bill, which I introduced with my colleague from Maine, Senator MITCHELL, set us on an effective course for dealing with this major public health threat.

Under the provisions in title IV, the EPA is directed to establish a radon program, and to serve as the lead agency in Federal efforts to address this problem; $15 million is authorized over the next 3 fiscal years for EPA's responsibilities under this title. EPA is directed to conduct a national assessment of radon contamination, and, in conjunction with other agencies, further research the health effects of radon contamination. Health guidelines are to be established, and guidance to States is to be provided. EPA will also work with the Department of Housing and Urban Development on model building codes, to prevent radon contamination from occurring in new homes and other buildings.

EPA is also directed to carry out a mitigation demonstration program. With funding that I was able to include in the EPA appropriations bill for fiscal years 1986 and 1987, EPA has begun this program. Its success will enable us to bring hazardous levels of radon under control, protect public health, and potentially save thousands of lives each year.

Mr. President, as these provisions demonstrate, this is a conference report that responds to the needs of this Nation. It enjoys overwhelming support in the Congress. I urge its swift adoption.

Mr. President, time is of the essence. This afternoon, I understand that the President will be meeting with his top advisers, many of whom will apparently urge him to veto or pocket veto this bill. Prior administration communications with the Congress suggest that the President's advisers will recommend a veto if the bill raised more than $5.3 billion in revenues, levied a tax on oil, or had a broad-based tax component. The bill contains all three of these components.

Mr. President, I hope the President will turn away from advice to veto this bill. I hope that the President will take into account the long deliberations which went into writing this bill, and the support it enjoys in a significant segment of the business community as well as the environmental community. I hope he will acknowledge the overwhelming margins by which the House and the Senate approved this legislation.

Mr. President, the public supports this bill. Recent public opinion polls make that clear. A recent national poll by NBC and the Wall Street Journal indicated that 67 percent of the American people view cleaning up toxic wastes as more important than tax reform. Another poll by CBS and the New York Times indicated that 67 percent of the American people agreed that requirements for cleaning up toxic wastes cannot be too stringent, regardless of the costs. That is quite a mandate for a strong, well-funded Superfund Program.

This is a clear message to the President from the American people and the Congress that the time has come to declare war on toxic wastes; to sign this conference report into law, and unleash a bold, new attack on the hazardous waste sites that threaten the environment and health of our people.

Mr. President, approval of this conference report is critical to New Jersey. New Jersey has 99 sites on the national priority list, the most of any State. The New Jersey Department of Environmental Protection estimates that at least $500 million over the next 5 years will be directed to New Jersey superfund efforts. However, if past trends hold, New Jersey could receive upward of 20 percent of funds allocable to States. In this case, New Jersey could gain at least $1 billion over the next 5 years.

In addition to the right to know and radon programs included in this bill, I authored numerous provisions in the Senate Superfund bill to address the serious problems New Jersey faces. I am very pleased that these provisions were retained by the conference. These provisions would:

Overturn the Supreme Court's Exxon versus Hunt decision, which preempted State taxing authority for State spill funds, such as New Jersey's. This provision is critical to New Jersey's plans for complementing the Federal Superfund Program with a State supported cleanup program.

Uphold the Boonton decision allowing municipalities to sue for cost recovery under the same Superfund provisions available to States, and to serve as trustees for natural resource damages. This provision permits communities to move ahead with cleanup plans on their own.

Require the replacement of household, not just drinking water, at sites with water contamination. In New Jersey, which is heavily dependent on ground water, this provision will assure that residents of communities with contaminated ground water will not be forced to absorb excessive costs to provide for their daily needs.

Require Federal facilities to submit annual reports to Congress on the hazards and cleanup progress at their sites. In New Jersey, we have had serious problems at some of our military bases. This provisions will alert communities to the status of toxic problems at federal facilities, and keep Members of Congress informed about progress at these sites.

Allow States to receive Superfund funding for 10 years for operation and maintenance costs associated with cleaning up surface and ground water contaminated at Superfund sites. New Jersey is dotted with such sites, especially in the south, which is heavily dependent on ground water for drinking water supplies.

Provide for State credits for work done at Superfund sites. This will permit New Jersey to move ahead more quickly in cleaning up sites, without forgoing Federal assistance to which it is entitled under Superfund.

Clarify that States may transfer funds to EPA and any Federal agency acting pursuant to an agreement with EPA, such as the Army Corps of Engineers, on an incremental basis for cleanups, and that States be credited with interest earned prior to actual application of the funds as the work progresses. I authored this section of the statement of managers provision clarifying that under section 104, the President acting through the EPA or any Federal agency pursuant to an agreement with the EPA—such as the Corps of Engineers—can fund multiyear remedial projects on an annual basis after obligating the entire cost of implementing the record of decision.

This report language is consistent with the authority of EPA to obligate the full amount of a multiyear project, but to pay contract costs over several years, including funds from future appropriations. This authority, known as contract authority, is available to other Federal agencies, such as the Corps of Engineers, which do large scale construciton projects. Such authority avoids full funding of contracts well in advance of the actual need for disbursements and the holding of large balances of unexpended appropriations for several years.

By permitting EPA to pay the costs of large projects from future appropriations, moneys are preserved for more immediate needs and more projects can be initiated. EPA would get such contract authority from the Appropriations Committees to permit it to enter into multiyear contracts subject to a monetary ceiling. In addition, EPA would request funds to cover contract payments to be made in that year.

Provide health programs, which include health assessments at all existing NPL sites by 1988.

Mr. President, in addition to these intitiatives, this bill includes research and development provisions, which include grants for establishing University Hazardous Substance Research Centers. Under section 209(d)(7), these R&D grants can provide funds for renovation of existing buildings, such as those at EPA's Edison, New Jersey facility, if such facilities are used for joint research by EPA and the consortium of universities operating the National Science Foundation Industry/University Cooperative Center for Research in Hazardous and Toxic Substances. This consortium is headquartered at the New Jersey Institute of Technology.

The consortium is also eligible to receive and use such grant money for all other purposes indicated in section 209 of the conference report. Authorizations for research centers in Section 118 of the Conference Report in no way affect the eligibility of the consortium for such section 209 grants. Selection criteria for grantees in section 209(d)(4) and the requirements of section 209(d)(1) operate independently or any section 118 authorizations. Thus, for example, the Administrator shall make grants to institutions of higher learning, such as the consortium, to operate not fewer than 5 hazardous substance research centers, and shall seek to have established 10 such centers, irrespective of section 118 authorizations.

Mr. President, these initiatives will do much to advance Superfund cleanups in New Jersey. It is critical that the Senate lend its full support to the conference report. While the administration has raised objections to the financing provisions, I believe that these provisions will provide a secure funding source for the program, and spread the burden of cleanup equitably. Mr. President, I have consistently opposed fees or taxes on oil imports in the past because they impose an unfair burden on oil dependent States like New Jersey. In this case, Mr. President, I will not oppose this segment of the financing package. In this case, Mr. President, we are not putting the burden of deficit reduction on oil dependent States—which prior proposals contemplated—but are agreeing to impose a marginal fee on domestic and imported oil and earmark these funds for toxic waste cleanup.

Mr. President, I strongly support passage of this bill. I again complement the leadership of the Committee, and my colleagues on the Committee, for sticking with this bill through dark and stormy days and nights. This day is the highlight of my days in the Senate. I urge the adoption of the Conference report.

Mr. President, I yield back my time

The PRESIDING OFFICER. Who yields time?

Mr. STAFFORD. Mr. President, I yield 5 minutes to the able Senator from Oregon.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon for a period of 5 minutes.

Mr. PACKWOOD. Mr. President, it has been a good week for the Congress, certainly for the Finance Committee, with the tax bill passing last week and now the Superfund bill. Of course, the way we work in the Senate, the Environment and Public Works Committee had the obligation of determining how the money should be spent, how the program should work, and then it fell to the Finance Committee to find the money that the Environment and Public Works Committee decided was needed. And that was $8.5-billion.

Mr. President, the Finance Committee, in May 1985, 17 months ago, reported a Superfund bill, reported the financing of a Superfund bill which came to this floor and passed overwhelmingly, on this floor. From that time to this we have been engaged in the debate with the House and among the House and among different committees as to how we should conclude. We are now going to conclude and it has been a classic example of James Madison's "Conflict of Interest" and different groups not wanting to be touched or taxed; "Please tax them and don't tax me."

We have heard RUSSELL LONG, our distinguished Senator from Louisiana, say it over and over: "Don't tax you, don't tax me, tax the man behind the tree."

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Everyone wanted somebody else to be taxed. I think the Wall Street Journal summed it up as well as it could be summed up today in reporting the story when they said:

> The agreement ended a year-long battle primarily pitting the oil and chemical industries against a coalition of other businesses over the issue of who would pay for the cleanup program. Both sides promptly attacked the agreement.
>
> A spokesman of the American Petroleum Institute called the oil tax "totally unjustified and unfair."
>
> Jeffrey Nedelman, vice president for public affairs of the Grocery Manufacturers Association, said the broad-based tax "should be rejected by the Congress or vetoed by President Reagan."

Mr. President, if we have succeeded in having a tax that neither the American petroleum Institute nor the Grocery Manufacturers Association likes, I think we have done well, and I would encourage this Senate to pass the conference report.

The PRESIDING OFFICER. Who yields time? The Senator from Texas, [Mr. BENTSEN].

Mr. BENTSEN. Mr. President, I yield 1 minute to the distinguished Senator from Maine, who made a very major contribution in a very difficult area involving differences with the House. We are grateful for the contribution he made.

The PRESIDING OFFICER. The Senator from Maine [Mr. MITCHELL] is recognized for 1 minute.

Mr. MITCHELL. I thank the distinguished ranking member.

Mr. President, the long and difficult

process of reauthorizing Superfund has finally come to an end. Three years ago we began this process with hopes for revitalizing a program that had been abused by EPA and that was in need of more specific direction and increased funding.

Since Superfund was enacted 6 years ago, the problem of uncontrolled releases of hazardous substances has dramatically increased. Before enactment of Superfund, many hoped that Love Canal and Times Beach were exceptions to the way hazardous substances were handled.

Instead, we have learned that practically no State is without some hazardous waste problem, and thousands more are being evaluated for inclusion on the list of Superfund sites. A site contaminated with toxic materials, once thought to be rare, is now known to be a common occurrence.

Due to this increased awareness of the problem, far greater sums of money are necessary to respond to this public health hazard. On this point we should be absolutely clear: Uncontrolled releases of hazardous substances presents a very real threat to the public health. Superfund is the way to clean up the contaminated water and soil so that our children do not become ill from toxic chemicals.

It has been rumored that the President will veto this bill because he objects to the broad-based tax included in the funding package for Superfund. I refuse to believe that the President would prefer to let American children be injured by contaminated water because of his opposition to a particular tax.

If the President pocket vetoes this bill, Congress would have no opportunity to override the veto and the Superfund Program would be dead for this year. The price of such an action is too high: We cannot permit people to drink contaminated water, to live in areas permeated with hazardous chemicals because of a debate over the appropriate taxing mechanism.

Instead, we need to move forward to implement these amendments as quickly as possible. During the year since the tax expired, activity at Superfund sites has slowed down and in some cases stopped altogether. We need this reauthorization in place immediately so a further slowdown of the program does not take place.

In Maine, for example, recently a potentially responsible party at the largest Superfund site in the State has refused to move forward on clean up, in part because EPA did not have enough money to do the cleanup on its own and then recover the costs from the responsible party. Reauthorization at this time will provide EPA with enough money to clean up the site. There are many more sites in the country, however, where cleanup has not begun because of the reauthorization delay and where cleanup is needed to protect the public.

Cleanup activity at sites all across the country will accelerate as the increased funding levels authorized by this legislation become available. This is the only way we have to begin again the process of protecting the public.

There are several issues addressed in this legislation that I would like to clarify. Chief among these issues is section 121, the cleanup standards section which I had the opportunity to play a major role in writing.

In addition, the new section 122 on settlements provides a clearer framework in which EPA may settle cases, where appropriate. There are also issues of particular concern to Maine that should be addressed.

In section 121, the bill governs the selection of remedial action under sections 104 and 106 of CERCLA. Under this new section, remedial actions must assure protection of human health and the environment. Remedial actions must also be selected and carried out in accordance with section 121, and, to the extent practicable, with the National Contingency Plan [NCP]. The President is to select remedial actions that provide for cost effective response.

The provision that actions under both sections 104 and 106 must be cost effective is a recognition of EPA's existing policy under the NCP. An analysis of cost effectiveness begins only after a remedial action has been selected in compliance with the health and environmental protection requirements, permanent treatment requirements, and other standards, requirements, criteria or limitations imposed under the law. The cost effectiveness requirement here, as under current law, does not apply to the selection of a remedial action but rather applies to choosing the least costly alternative method of effectively implementing a remedial action once one has been selected. For example, the selection of a

remedial action might involve a choice between various onsite containment alternatives and a permanent treatment technology. Under section 121(b), permanent treatment technologies must be chosen whenever they are feasible and achievable. Otherwise, containment remedies such as a cap over the site and a slurry wall to prevent further leakage might be selected.

Once the remedy has been selected, the cost-effectiveness requirement is applied to its implementation. Implementation of the remedy would involve choosing the least costly methods and contractors which will effectively carry out these alternatives. Criteria to be considered in determining cost-effectiveness include, in addition to the total cost of implementing the remedy projected by each potential contractor, the past record of performance of the persons or firms competing for the project; the relative merits of the various proposals submitted by such persons or firms; and, where permanent treatment technologies are not utilized, the degree to which expenditure of larger sums will enhance the durability of the remedy.

The legislation states that remedial actions selected by the President shall, to the extent practicable, comply with the national contingency plan [NCP]. This language is intended to assure that alleged failures to comply with the NCP shall not be available as a defense to any liability asserted in an enforcement proceeding brought under sections 106 or 107. The language is not intended to provide any authority to EPA or other agencies to fail to apply, to overlook, to ignore or to waive any standard, requirement, criteria, or limitation established under the law.

Section 121(b) establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discrete units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

"Permanent treatment or alternative technologies" means treatment methods that permanently and significantly reduce the volume, toxicity or **mobility of the hazardous substances, pollutants, and contaminants. In addition to the quantitative reduction implied, significant reduction in this context means the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable with available technologies. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them; for example, incineration or neutralizing them; for example, application of chemical or bioengineered neutralization agents. Mere reductions in volume of toxic and mobile substances, by dewatering the substances, for example, would not constitute effective use of a permanent treatment or alternative technology.** The purpose of requiring such technologies is to eliminate hazards to human health and the environment on a permanent basis. "Permanent solution" means the application of permanent treatment of solution" means the application of permanent treatment of alternative technologies to hazardous substances, pollutants and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a hazard to human health or the environment, on a permanent basis.

It is a major purpose of this legislation to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions in the selection of remedies, whenever they are feasible. To carry out the goal of implementing permanent technologies and permanent solutions whenever feasible, section 121(b) requires that whenever a remedial action is selected, such technologies and solutions must be assessed. Such assessments are, at a minimum, to take into account the following factors;

First, the long-term uncertainties associated with land disposal: Any land disposal facility, even one employing the best available technology, is likely to leak. It is uncertain whether the institutional cleanup resources will be available when leakage occurs. There are uncertainties inherent in predicting the size and location of future populations.

Second, the goals, objectives and requirements of the Solid Waste Disposal Act: For example, that act bans most land disposal of hazardous wastes and creates incentives for the development of permanent treatment and resource recovery technologies whenever possible.

Third, the persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents: It is these characteristics which necessitate the use of permanent treatment technologies at Superfund sites rather than containment. Since all containment systems ultimately fail, it is important to assess the hazard timeframe of substances at a site when selecting a remedial action. For example, some substances become more toxic over time, such as those which biodegrade or are transformed to toxic byproducts.

Fourth, short- and long-term potential for adverse human health effects: The assessment should consider the hazards posed by each available remedial action to people who are or may be exposed to hazardous substances, pollutants and contaminants as a result of the remedy chosen. For example, the less permanent the remedy, the greater the potential for adverse health effects as a result of continued or renewed releases over the long term.

Fifth, long-term maintenance costs: Permanent solutions may cost more initially, but may involve little, if any, long-term maintenance costs.

Sixth, the potential for future remedial action costs if the alternative remedial action in question were to fail: Once again, the more permanent the initial remedial action that is implemented, the lower the costs of repairing any failures of the remedy.

Seventh, the potential threat to human health and the environment associated with excavation, transportation and redisposal, or containment: This factor is really a specific subset of the overall health effects consideration incorporated in the assessment and is designed to assure that the selection of remedy take into account possible risks associated with expanding the populations exposed to hazardous substances, pollutants or contaminants when such substances are moved offsite, comparing that risk to the risk posed by containment onsite. The legislation does not require a quantitative, comparative risk assessment, but rather contemplates an objective consideration of all of the factors affecting or potentially affecting human health.

Whenever a remedial action is selected that does not implement a permanent solution, or that does not implement a permanent or alternative treatment technology, the reasons for rejecting such a solution, or for failing to implement such technologies, must be explained. Such explanation must include a discussion of the permanent solutions examined and rejected, and an analysis supporting the proposed solution. The explanation is subject to public comment as part of the remedial investigation and feasibility study.

To encourage the development and implementation of innovative permanent treatment technologies, the legislation permits the President to select such technologies whether or not they have been achieved in practice at other similar sites or facilities. A technology still at the experimental phase could be deemed cost-effective under this provision, as this is a technology-forcing provision. The legislation further permits the President to take into consideration whether residents of the community around a site in general endorse implementation of an experimental technology.

Section 121(c) provides that whenever the remedial action at a site involves an onsite remedy that does not result in a permanent solution, so that hazardous substances, pollutants or contaminants are left at the site, there is a mandatory duty that the President conduct a periodic review of the continued effectiveness of such remedies and report the results to the Congress. Such reviews shall be conducted no less often than every 5 years beginning on the date that remedial action is first initiated. Under these reviews the President shall determine whether the remedial action is sufficient to protect human health and the environment and whether a permanent remedy is now available. If the results of the review are negative; that is, if the remedial action either has failed or appears likely to fail in the future, the President shall take action under section 104 or 106 to improve such remedy. Ordinarily, action under section 106 would be more appropriate if there is any responsible party.

In determining what actions to take as a result of a periodic review, the President shall consider whether permanent or alternative treatment technologies have been developed since the remedial action was first selected and shall implement such technologies wherever possible. The periodic review provision is intended to assure that Superfund cleanups keep pace with developing technologies and that remedial actions are upgraded to take advantage of such developing technologies. It is another technology-forcing provision. The ultimate goal of the Superfund Program must be to implement permanent solution at all national priorities list sites. One way to accomplish this goal is to require periodic review and to assure that sites are not removed from the ambit of the program until such permanent solutions have been implemented.

As noted earlier, section 121 requires that any remedial action selected under section 104 or required under section 106 must, at a minimum, assure protection of human health and the environment. The general standard of "protection of human health and the environment" is the same standard that applies under subtitle C of the Solid Waste Disposal Act. The legislation requires that this standard be the minimum standard met by any Superfund cleanup. The general standard applies to two aspects of a remedial action: First, the degree of cleanup of any hazardous substance, pollutant or contaminant already released into the environment, and second, control of further releases of such substances.

Section 121(d) requires that onsite remedial actions selected or required under sections 104 or 106 must comply with specific standards, requirements, criteria, or limitations established under the Federal laws and under State laws.

These specific standards, requirements, criteria, or limitations include those established by all Federal environmental legislation, including the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection, Research, and Sanctuaries Act, and the Solid Waste Disposal Act. The laws to be applied also include any State environmental or facility siting law requirement that is more stringent than a comparable Federal requirement, if the State identifies such law to the President in a timely fashion. This, of course, includes any State requirement where there is no comparable Federal requirement.

The list of Federal and State laws established by the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria, or limitations that must be applied to Superfund remedial actions. If the President, or a State, or the courts determine that other, unlisted laws contain standards which are legally applicable, or relevant and appropriate, such standards shall apply to such remedial actions. Where two applicable or relevant and appropriate Federal or State standards, requirements, criteria, or limitations pertain to the same situation, or to the same hazardous substance, pollutant or contaminant, the more stringent one shall be used in selecting a remedial action. For example, a ground water residue guidance level being proposed as an amendment to the Safe Drinking Water Act in the reauthorization of FIFRA, could not be used as a less stringent standard for a remedial action.

The Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] does not provide for preemption of any legally applicable requirement established under any other Federal or State law. For example, all requirements contained in subtitle C of the Solid Waste Disposal Act, commonly known as [RCRA], currently apply as a legal matter to onsite remedial actions conducted under CERCLA, in such situations as when the facility is a facility already covered by RCRA or hazardous wastes are exhumed and redeposited at the site. The legislation reiterates the effect of current law that the specific standards, requirements, criteria, or limitations already legally applicable to Superfund cleanups must be applied to remedial actions selected or required under sections 104 or 106 after the date of enactment. RCRA facilities must continue to meet RCRA standards, irrespective of other provisions in this law, even if the site is listed on the national priorities list.

Section 121(d) provides that standards, requirements, criteria, or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate". The first test of relevance and appropriateness is whether the standard, requirement, criteria, or limitation at issue was developed for the same environmental media as the media contaminated by the Superfund site. Standards developed under the Clean Water Act and the Safe Drinking Water Act would therefore be relevant both to contaminated ground and surface water at a Superfund cleanup, if not already legally applicable. Similarly, Clean Air Act ambient air standards would be relevant to air emissions of hazardous substances, pollutants, or contaminants released from a Superfund site.

The second test of relevance and appropriateness involves a determination of which environmental media serve as pathways for actual or potential human or environmental exposure to a hazardous substance, pollutant or contaminant. Once such pathways are determined, the purposes for which the standard, requirement, criteria, or limitation at issue was developed should be considered. Such standards should be applied whenever the purpose for which they were developed involve reduction of the contamination of such pathways to safe levels. For example, Safe Drinking Water Act standards used to protect public drinking water supplies may not be appropriate for application to a briney aquifer, which would never be fit for human consumption even if it was cleaned up. At the same time, aquifers which may have any potential future use as a source of water supply should be cleaned up to such standards whether or not they are currently used or considered for drinking water supplies.

It will be important to consider the purpose for which a standard was developed in determining its relevance to Superfund cleanups. The purpose of the standards developed under the Safe Drinking Water Act, for example, is to protect people from drinking contaminated water. That act applies these protections at the tap. Of course, many of these standards are made legally applicable to Superfund cleanups, as part of the ground water protection standards under RCRA. Even where not legally applicable, they may be relevant, and in order to effectively utilize these standards in selecting a remedial action at a Superfund site, they must be applies not only at the tap, but wherever the contaminated water is found so that the contamination can be reduced to safe levels once the cleanup is completed. Section 121(d) prohibits writing off potentially useful ground water supplies that have been contaminated by Superfund site. Such natural resources are both finite and irreplacable. The purpose of the Superfund program is to reclaim such contaminated resources wherever possible.

Finally, in determining the relevance and appropriateness of standards, requirements, criteria, or limitations, EPA should consider not only pathways exposure but also the impact on the environment of contamination from a Superfund site. Environmental contamination must be reduced to safe levels both to protect ecosystems and to prevent the public health threats of indirect exposure to hazardous substances, pollutants or contaminants. Perhaps the most obvious example of this latter phenomenon is contamination of the human food chain by releases from Superfund sites.

Section 121(d) specifically requires application of maximum contamination level goals (formerly known as recommended maximum contamination levels [RMCL's] developed under the Safe Drinking Water Act whenever they are relevant and appropriate. The Congress chose to apply RMCL's instead of relying only on the legally applicable maximum contamination levels [MCL's] because RMCL's are based solely on public health considerations. MCL's can reflect the modification—and loosening—of such health-based standards on the basis of cost considerations that should not be applied to Superfund cleanups. Use of MCL's for Superfund cleanups could result in cleanups that do not protect human health and the environment.

The legislation specifies the factors that are to be considered in determining whether water quality criteria developed under the Clean Water Act are relevant and appropriate. These factors are the designated or potential use of surface or ground water, the environmental media affected, the purposes for which such criteria were developed, and the latest information available. Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria establish maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20 to 30 such chemicals. Water quality criteria typically contain three different exposure levels (or numbers) depending on whether the water at issue will be (a) consumed by people; (2) consumed by people and used to support aquatic life, and (3) used only to support aquatic life.

In determining how to apply such

criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially usable as a source of drinking water is contaminated by water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption. The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate.

This provision affects the selection of the appropriate exposure level and does not mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

In certain specified and limited circumstances, section 121 permits use of a regulatory process for setting alternate concentration levels [ACL's] which was developed by EPA under RCRA. As currently implemented by EPA, the ACL process allows the owner or operator of a RCRA facility to demonstrate that some alternative level of contamination other than background does not threaten human health and the environment. I do not believe this ACL process is sound policy under RCRA, nor in my opinion is it authorized by law. This bill does not specifically address the RCRA ACL process, however. Instead, this bill provides the opportunity to demonstrate an ACL during the course of Superfund cleanup under specified conditions. The first such condition is that the ACL process should only be used when no other previously established standard or level of control—for example, water quality criteria or RMCL—applies to the hazardous substance, pollutant, or contaminant at issue. If any other standard or level of control is legally applicable, or relevant and appropriate, establishment of a separate ACL is both necessary and inappropriate.

A second condition on the use of ACL's is that they must be based on a point of human exposure that is not located beyond the boundary of the Superfund facility. The facility boundaries are in turn to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site. "Facility" is defined under CERCLA as the place where hazardous substances, pollutants, or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination caused by a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility," where hazardous substances, pollutants, or contaminants have come to be located. The remedial action called for in the RI/FS will then clean up the entire facility, and prevent future releases from such facility. Neutral or buffer zones which have not yet been contaminated therefore cannot constitute a "facility" at the completion of the RI/FS.

There is a narrow exception to the rule that the point of assumed human exposure use to establish and ACL cannot be beyond the facility boundary. Three conditions must be met before a different point of exposure may be used:

First. The first is that the contaminated ground water at the site is known to feed into a source of surface water, for example, a lake or stream, that is quite close to the facility. Eventual discharge into distant water bodies does not qualify.

Second. The second is that at the specific point where such ground water first enters the surface water, there is (or will be) no statistically significant increase in hazardous constituents, nor any accumulation of such constituents downstream. Such accumulation could occur downstream in either the water sediment or biota (due to bioaccumulation). This second condition can only be satisfied if the hazardous constituent in the ground water is not measureably increased at the first point where the ground water feeds into surface water.

Third. The third condition is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place and cannot be reversed for as long as the waste remains hazardous.

Under the ground water protection

standards of RCRA. In the absence of an MCL for a substance, the standard would be the background level. A ground water residue guidance level (if different than an MCL) is not a starting point for developing such standard.

Section 121(d) also incorporates and strengthens EPA's "offsite" policy. Whenever a remedial action involves the movement of hazardous substances, pollutants or contaminants offsite, they may only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act (or, where applicable, the Toxic Substances Control Act or other Federal law such as the Atomic Energy Act). Such substances may be transferred to a land disposal facility only if the President determines that two conditions are met: First, the unit receiving the substances is not leaking into ground or surface water or soil; and second, all releases from other units at the facility are being controlled by a corrective action program. Although this provision does not require that a land disposal facility have received a final RCRA permit before receiving Superfund wastes, it is intended to assure that only the most secure facilities are chosen so that the Superfund problem is not compounded. In this regard, such facilities can ordinarily only meet the second condition imposed by the legislation if the corrective action has already been performed in accordance with sections 3004(u) and (v) and 3008(h) of the Solid Waste Disposal Act.

Section 121(d) provides that a remedial action which does not comply with a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation may be selected only if the President makes one or more of six affirmative findings. Such findings must be made on a site-by-site basis and are subject to the public participation requirements of the legislation.

The first finding is that the remedial action selected is only a phase in a longer-term remedial action, when the longer-term remedial action will complete cleanup at the facility and will meet all applicable or relevant and appropriate standards, requirements, criteria, or limitations. This provision gives the President some leeway in conducting phases of cleanup, but should not be read to permit indefinite delays in final cleanup.

The second finding is that compliance with a requirement would result in greater risk to human health and the environment than alternative options. This finding should apply to a few, unique sites where application of available cleanup technologies would cause uncontrollable disruption and release of hazardous substances, pollutants or contaminants and would therefore pose a greater risk to human health and the environment than simply securing such substances where they are located. For example, the national priorities list contains a few sites that are major harbors or bays. Dredging such sites in an effort to remove accumulations of hazardous wastes may, in some circumstances, pose greater risks to human health and the environment than employing alternative containment options.

The third finding is that compliance with such requirements is technologically impracticable from an engineering perspective. Once again, this finding should apply to a small number of relatively unusual situations where no technologies for hazardous waste treatment, destruction, or disposal have been developed that would meet the requirements. In such cases, the periodic review provisions of the legislation should be employed to assure that as such technologies are developed, they are employed at the facility. Cost is not an appropriate consideration under this finding.

The fourth finding is that use of a method or approach other than one required under an otherwise applicable standard, requirement, criteria, or limitation will achieve an equivalent standard of performance. This provision is designed for situations where a new or alternative technology not contemplated under existing regulations would work as well as the established approach. For example, RCRA might require placement of double liners at the bottom of land disposal facilities, but the hazardous substances, pollutants, or contaminants at a Superfund site may be susceptible to a new treatment technology that solidifies or neutralizes them in place. If such alternative technologies, together with the locational characteristics of the site, will prevent migration of any hazardous constituents into ground or surface water near the site, an alternative technology may be used in lieu of a double liner.

The fifth finding is that, with respect to provisions of State law, the State has not consistently applied the standard, requirement, criteria, or limitation in similar circumstances at other remedial actions within the State.

The sixth finding reflects a recodification of the policy in current law commonly known as fund balancing. This is limited to cleanups completely funded by the Superfund under section 104. Under this provision, the President may—under limited circumstances and out of absolute necessity—select a remedial action that does not meet a specific Superfund cleanup standard if there will not be sufficient resources left in the fund to respond to sites posing more immediate and severe threats to public health and the environment. Fund balancing should be invoked with the utmost caution, and only where there is an irreconcilable conflict between the costs of a fully complying cleanup and the fund's ability to address sites posing much more serious hazards. Any such finding should be accompanied with a full analysis of the manner in which the President evaluated such relative hazards. It is important to note that where the money to pay for a remedial action is provided by both the Federal trust fund and a private responsible party or parties, the fund-balancing finding does not apply.

Section 121(e) provides that no Federal, State, or local permit shall be required for any portion of a remedial action that occurs onsite, provided that the remedial action is in complete compliance with the cleanup standards contained in section 121. The purpose of this provision is to streamline the cleanup process by exempting remedial actions from the procedural requirements of Federal, State, and local permit programs, while still preserving the applicability of the substantive health and environmental standards that are implemented by such programs. While EPA, private parties, or others conducting remedial actions do not have to obtain a formal permit, they are still required to meet whatever substantive standards the Federal Government and State and local governments apply in other contexts through the vehicle of permitting.

The legislation also clarifies the States' authority to enforce any Federal or State standard, requirement, criteria, or limitation applied under its provisions to remedial actions. The States' ability to enforce such standards safeguards their ability to insist, through enforcement actions in Federal district court, that the goals of their permitting programs are met, even if the technical requirement to obtain a permit is waived in the context of any given cleanup.

Under CERCLA there is no preemption of State standards that may apply to response actions. States are free to enforce such standards through court action. To further assure that all State standards, requirements, criteria, and limitations are met by remedial actions selected by the President, even though formal permits are not required, section 121(f) requires EPA to promulgate regulations providing an opportunity for meaningful State involvement in the formulation of remedial actions.

No funded financial remedial action can ever go forward without State agreement as to the cleanup standards, because of the ability of the State to withhold its share of the funding. In the context of remedial actions secured under section 106, or performed at facilities owned or operated by a Federal agency or department, the State must be given an opportunity to concur in the selection of the remedy at least 30 days prior to publication of the final remedial action plan.

If the State does not concur, and the remedial action plan is approved over its objections, the State may then intervene in a proceeding brought under section 106, or maintain an action against the Federal agency or department, to seek reversal of the final remedial action decision. The challenged decision shall be overturned unless it is supported by substantial evidence. This standard is different than the arbitrary and capricious standard that applies under section 122 of the amendments and is intended to subject the validity of the remedial action decision challenged by the State to more searching scrutiny by the court.

The effective date for section 121 of the amendment is the date of enactment, with two limited exceptions. EPA currently embodies final remedial action decisions in a document called a record of decision, or ROD. The amendments provide that the requirements of section 121 do not apply to remedial actions covered by ROD's signed prior to the date of enactment. Any remedial action decision not explicitly addressed in the ROD does not fall under this limited grandfather provision. Further, if any ROD is ever reopened after the date of enactment to reconsider, modify, supplement, or otherwise change in any manner the remedial action that was selected, the requirements of section 121 apply to the entire ROD, and not just the reopened portion. For ROD's signed between the date of enactment and 30 days following the date of enactment, the legislation requires the Administrator to certify that the remedial action selected conforms with section 121 to the maximum extent practicable. This requirement places a nondiscretionary duty on the Administrator, carrying out the responsibility of the President under section 121, to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment.

The standards provision is clearly a major improvement over current law, which is silent on this issue. The inclusion of a specific standards section, however, creates the need for enforceability of the standards. The Senate bill barred any review of a response action before it was complete in order to prevent responsible parties from using litigation to delay cleanup. The conferees agreed to a much more detailed standards provision than had been included in the Senate bill.

The new provision gave rise to concerns that citizens would not be able to enforce the standards until the remedy was complete. In some cases, pumping and treating of ground water could take decades and thus citizens would be barred from suit until it was too late to effect an improved remedy as provided under section 121.

The conferees agreed that some pre-implementation review would be provided so that citizens would not be disadvantaged by having to wait until cleanup was complete. Nuisance suits would, of course, be permitted at any time. A suit to compel compliance with the CERCLA standards would be permitted, under section 113(h) after each stage of cleanup is complete. In this way, an entire cleanup need not be complete before a citizen can sue. Similarly, responsible parties cannot halt cleanup because of concerns that the cleanup is excessive.

In considering whether citizens' suits should lie for cleanup, it is important to consider the equities of the situation. Citizens are suing to compel compliance with cleanup standards that are designed to protect the public health. Responsible parties, on the other hand, may be suing to halt cleanup because of concerns that the response action is too costly.

Clearly the risk to the public health is more of an irreparable injury than the momentary loss of money. If a response action is proven to be too expensive, responsible parties can be reimbursed by the fund for the excess cost. The public, however, has no recourse if their health has been impaired. For this reason, courts should carefully weigh the equities and give great weight to the public health risks involved.

Section 120 addresses cleanup of sites that are at Federal facilities. Many States have Superfund sites at Federal facilities, including Maine, Florida, California, and New York. Three Superfund sites in Maine—Portsmouth Naval Shipyard, Loring Air Force Base, and Brunswick Naval Air Station—are at such facilities. I am therefore particularly concerned that this section be implemented appropriately.

My primary concern about Federal facilities has been the difficulty States such as Maine have had in requiring Federal agencies to pay State fees and penalties as do other responsible parties. In Maine, there is currently pending litigation regarding the Portsmouth Naval Shipyard in which the State seeks penalties and fees owed by the Department of Defense to Maine.

These kinds of issues are clarified in section 120, which states in subsection (a)(1),

> Each department, agency, and instrumentality of the United States . . . shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, . . .

As stated in the statement of managers agreed to by the Superfund conferees:

> This clarifies that CERCLA, together with RCRA, requires Federal facilities to comply with all Federal, State and local requirements, procedural and substantive, including fees and penalties, except as provided in section 121.

Section 6001 of the Resource Conservation and Recovery Act [RCRA] clearly states that Federal agencies are to be "subject to , and comply with, all Federal, State, interstate, and local requirements, both substance and procedural." This section, together with section 120 of CERCLA, can leave no doubt that Federal facilities are subject to State laws, including State fees and penalties.

In addition, section 120 clarifies that sovereign immunity is broadly waived. By clarifying that Federal facilities are to be treated as nongovernmental entities, sovereign immunity is waived. Thus, Federal facilities are subject to all State administrative and court procedures and sanctions, including penalties and injunctions.

I am pleased that the conferees chose to clarify these points. It is essential that the Government elected by the people to protect them not to be excused from protecting the public health under a Federal statute such as Superfund. Such double standards are anathema to those of us who believe that the Federal Government's primary task is to protect the public, not to contaminate it.

Another area of personal interest to me is section 122, which addresses settlements between EPA and responsible parties. This section explicitly authorizes EPA to enter into settlement agreements with responsible parties in limited circumstances. This authority is discretionary, signifying a change from the Senate version which required EPA to explore the settlement option.

The question of whether EPA should settle cases with potentially responsible parties [PRP's] had a long history. As many will remember, it was sweetheart deals that EPA negotiated with PRP's several years ago that led to the resignation of Rita Lavelle and Anne Burford. This bill establishes the framework in which EPA can negotiate tough settlements with PRP's in the interest of cleaning up a site more quickly. The settlements provision is not a carte blanche for the agency to cease enforcement activity and to agree to any offers by PRP's.

Section 122, to the contrary, envisions an agency that uses all of its enforcement tools to persuade PRP's to clean up a site quickly and effectively so that people are no longer exposed to hazardous substances. The agency was involved in negotiations on this section, as well as other sections of the bill, and should have a firm grasp of the concerns I and other members of the conference committee expressed about the risks of future sweetheart agreements. I cannot stress too strongly my view that this section is designed only to provide settlement guidance to the agency. The purpose is to clarify the limited circumstances in which settlements are appropriate; the purpose is not to encourage EPA to settle as many cases as possible.

A court's authority to review consent decrees is not diminished or modified. There continues to be judicial review of these decrees as a check on the agency's exercise of its discretionary authority to enter into settlement agreements. The court can review the decree to determine whether the decree is in the public interest.

The settlement should only be undertaken if the President determines that the responsible party will properly undertake a response action, and if such a settlement is practicable and in the public interest. These kinds of requirements clarify that the President is to consider the quality of the arrangement. A responsible party may be agreeable to undertaking an approved response action, but due to lack of experience, financial resources, or the type of cleanup involved, settlement may be an inappropriate alternative.

A decision by the President not to settle a case should not be an unusual occurrence, nor should the President feel obligated to try to settle every case. Settlement should only occur if the President is satisfied that the site will be cleaned up more quickly and at least as completely as it would be if the fund were to perform the cleanup. Without doubt, settlement of cases is not an opportunity to avoid any of the cleanup requirements or procedures of the act.

Section 122 authorizes the President to enter into covenants not to sue. Such covenant is clearly reviewable by a court and should be carefully scrutinized, since a covenant not to sue may excuse responsible parties from some obligation. It is expected that such covenants will not be agreed to often, since any reduction in responsibility by the responsible party is a proportional increase in the Federal responsibility to pay for any future response costs.

Consistent with this view is the requirement under section 122(c) of CERCLA that more permanent remedies be granted more complete covenants not to sue. This is EPA's current policy, as presented to the conferees, and should be assiduously implemented.

Section 122(e) of the act sets forth

the settlement procedure. None of the information described in paragraph (1) is to be provided if it is unavailable. For example, under section 122(e)(1)(B) and (C), the President is to provide PRP's with a ranking of substances contributed by each PRP at a site. This could be an onerous burden for the Agency unless it is limited to information that is reasonably at hand. Similarly a release of such information could place the President at a serious disadvantage when litigating cases. Settlement procedures should not be used to diminish the Government's ability to litigate.

The President is authorized under section 122(e)(3) to prepare nonbinding preliminary allocations of responsibility [non-PAR's]. Preparation of such a non-PAR is discretionary, and the costs of preparing the non-PAR shall be borne by the PRP's. If a PRP makes an offer based on the non-PAR, the President may reject the offer. This is a change from the Senate bill, which stated that a rejection by the President of an offer of more than 50 percent of the non-PAR would mean that the President would bear the burden of proof in court, should a PRP sue the President for such rejections.

The conferees agreed to drop this provision and left the entire process discretionary. In doing so, the conferees did not endorse the 50 percent requirement. The debate over the appropriate percentage was not resolved and so the reference was dropped. The President should not consider 50 percent offers to necessarily be offers worth considering or settling. Many conferees believes that a higher percentage should be the threshold for serious settlements.

Section 122(e)(6) clarifies that no PRP can undertake any remedial action at a facility without authorization by the President. This is to avoid situations in which the PRP begins work at a site that prejudges or may be inconsistent with what the final remedy should be or exacerbates the problem.

Section 122(f) addresses convenants not to sue. The President is authorized under paragraph 1 to provide such convenants where they are, in the public interest and would expedite response action consistent with the NPL, where the PRP is in full compliance with a section 106 consent decree, and the response action has been approved by the President.

Each of these elements must be present and should be carefully scrutinized by the President. These are requirements not easily met and the first of them, the requirement that the covenant not to sue be in the public interest, may be one of the most difficult tests to meet.

The President should be restrained primarily by protection of the public health and the environment. This is of particular concern in this context in which we know relatively little about future behavior of contaminants. Ground water that was believed to have been cleaned up 20 years from now may be discovered to be contaminated because a contaminated plume was missed in the monitoring. Similarly, technologies we rely upon today may tomorrow be found wanting and presenting new or greater risks to the public then we believe exist today.

In addition, whatever release is provided by the covenant not to sue is an obligation that the Federal Government may have to absorb. Any error by the President in granting the covenant not to sue will create greater problems and expense for the Federal Government later.

The rarest of all covenants not to sue should be the paragraph 2 special covenants. These covenants are to be granted where there is permanent treatment. Permanent treatment is narrowly defined and includes treatment that destroys, eliminates, or permanently immobilizes the hazardous constituents of a substance. It clearly does not include permanent storage in a vault or other container, since there is no permanent immobilization or change in the character of the hazardous substance. Permanent treatment means that no person would run any risk of being exposed to a hazardous substance after treatment. In the case of permanent storage, the nature of the hazardous substance remains the same, but the possibility of exposure is reduced. This is clearly insufficient to qualify as permanent treatment and a special covenant not to sue under this paragraph.

The President should grant such a covenant only in the most rare of circumstances, since the covenant is by nature broader than the paragraph 1 covenant and the future responsibility of the United States is proportionately greater. In any covenant not to sue, as clarified in paragraph 4, such a covenant cannot be agreed upon until the

President determines that remedial action has been completed in accordance with the requirements of the act. None of the covenants can excuse compliance with CERCLA requirements.

If there is any question about the effectiveness of the treatment, the covenant should not be granted. In addition, if less major issues are in question, the President may include conditions in either paragraph 1 or paragraph 2 covenants. Conditions, like the decisions to enter into a covenant not to sue, are to be in the public interest and may be based on a variety of factors, including those listed in paragraph 4.

These factors highlight the need to be sure that the technology or treatment will perform as promised and that there is sufficient knowledge about the method chosen to assure such treatement or technology will be correctly implemented and achieved specified results.

In addition, it is important for the President to ask a basic question: Who will pay if there is a problem in the future? So little is known about much of the contamination at Superfund sites, that it is difficult to be sure that no future liability will occur. For example, the President may enter into a covenant not to sue with a PRP at an NPL site, and the responsible parties treats the soil and ground water and removes the contaminants in the agreed upon manner. Years later it may develop that the monitoring missed a major plume and the ground water serving a town of 10,000 people is contaminated. Who would pay to clean up the ground water and provide water to town residents? Such a covenant may on its face not be in the public interest as well, since such a population could have been at risk.

In any event, future enforcement action should be an option under the covenants to assure that the public health is protected. From the perspective of the public, if the President does not use every option at the President's disposal to protect the public health, then the public is placed at a severe disadvantage.

The final Superfund bill also includes the legislation I have developed over the past year concerning research of the health effects of exposure to radon gas. Radon is a naturally occurring gas which is found in Maine as well as other areas of the country. It can build up inside homes to levels which pose a health risk. The EPA estimates that between 5,000 and 20,000 people die each year of lung cancer caused by exposure to radon gas. This legislation directs the EPA to establish a research program addressing radon and other indoor pollutants.

EPA will also conduct a program to demonstrate a range of measures to reduce radon levels in homes in different parts of the country. This demonstration program will result in the kind of practical information on how to control radon which is badly needed by homeowners in Maine and other parts of the country.

Other provisions of the legislation provide for a national assessment of the extent and seriousness of the radon problem in the United States and an overall report to Congress on radon and related pollutants within 2 years.

This legislation benefited from the contributions of a number of people from Maine. I held a hearing on this issue in Augusta, ME, last year and heard testimony from radon experts from the University of Maine, the Maine Medical Center, several departments of the State government, and citizens who have discovered high levels of radon in their homes.

I will play an active role in overseeing the implementation of this important research and demonstration program over the next several years.

Too many citizens have already had to familiarize themselves with the alphabet soup of chemical names because they or their families were exposed to the hazardous substance. The purpose of CERCLA is to protect the public from such exposure and to assure that the Federal Government is an advocate of the public in assuring that Superfund sites are cleaned up and responsible parties are truly responsible.

I will take a few seconds to express my appreciation to the chairman of the committee, Senator STAFFORD, the ranking member, Senator BENTSEN, and all of the other members of the committee who worked so long and so hard over what seemed like an endless process to achieve this result; the chairman of the Finance Committee, as well; and I see Senator MOYNIHAN and of course the two Senators from New Jersey who perhaps have been foremost among all Members of Congress in calling attention to this problem, insisting on and helping to shape what I hope will be a farreaching solution to the problem.

Senators BRADLEY and LAUTENBERG have done a great job. Senator LAUTENBERG is a member of the committee, the conference committee, and did a great deal. Without his efforts, there would not be a bill here today.

I thank you.

I yield back the remainder of my time.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. I yield 2 minutes to the very able Senator from New York.

Mr. MOYNIHAN. I thank my friend, the distinguished chairman of the Environment and Public Works Committee, who has lead us in our efforts to respond to the hazards of abandoned toxic wastes. Claiming no pride of authority, he brought our initial efforts to fruition 6 years ago, in December of 1980, with the Comprehensive Environmental Response Compensation and Liability Act—the Superfund. Love Canal and Niagara Falls, NY, first brought the matter to our attention; it commands it still.

With the second round of Superfund authorization, we provide the institutional framework for the cleanups that will follow in the next half-decade; they merit the substantial financing provisions contained in the bill.

Since Superfund's initial passage, the Solid Waste Disposal Act Amendments of 1984 have improved our ability to rid ourselves of these substances as we create them. We must continue to pursue that goal even more effectively in the years ahead as we work to clean up those that were not so carefully disposed of.

I also hope, Mr. President, that we will find time to obtain a true accounting of where the money we appropriate for cleanup is going from the Environmental Protection Agency.

It seems clear that far too much is going to litigation, and far too little is going to mitigation.

That is something that we have addressed to some extent in the current legislation, but it remains something the Committee on Environmental and Public Works should inquire into at some length, perhaps even at some leisure, in the years ahead.

With the long-delayed passage of the current bill, we make it clear that this body recognizes that the public cleanups, and that allowing this situation to continue is simply intolerable. At last, we can finally say to the EPA: "Here is the wherewithal, here are you instructions—now get on with it, and do it properly."

The problem of carelessly disposed of hazardous wastes did not arise overnight. In New York, we knew something was wrong in the early 1970's; on August 7, 1978, when President Carter declared a Federal emergency at a place called Love Canal, the entire country knew.

Throughout the 1930's and the 1940's, all manner of hazardous substances had been buried in what was once meant to be a canal for navigation and for power. In time, through an unfortunate sequence of events, it became the site for a school and for a neighborhood. And in the time since we discovered it for what it was, it has become through another unfortunate sequence of events, a symbol of how poorly both private industry and our Government have coped with the hazards of improperly disposed hazardous wastes.

In 1980, I was an original cosponsor of the Comprehensive Environmental Response, Compensation and Liability Act. We began the slow process of searching for other potential "Love Canal's", and learning how to make them safe again. Little did we know in 1980 how many there would be, how long the cleanups would take, or how much they might cost.

The Environmental Protection Agency has had a slow start. Perhaps half a dozen of our most hazardous toxic waste dumps have been cleaned up, but the Agency has said that 541 more deserve places on the national priority list of the worst sites. EPA estimates that the number may grow to 1,500 or 2,500; the Office of Technology Assessment believes the number could reach 10,000. And these numbers do not include tens of thousands of lesser dumps that will ultimately be left to the States for cleanup. In New York alone, we have found over 1,400 candidate sites so far.

In 1980, we thought that $1.6 billion spent over 5 years would bring us well along the way to solving this problem; now we know better. If the EPA estimates are right, the final cleanup cost for only the most hazardous dumps could reach $22.7 billion, and their numbers are very optimistic. Probably unrealistic. One thing we have learned in 5 years is that making good on our commitment to protect the public health is going to cost a lot more money. The $9 billion provided in this legislation is by no means too much.

We also have learned that we cannot expect rapid results—it takes a long time to determine just what the problem is at each site, how big the problem is, and how best to solve it so as to protect the public. Six sites completed in as many years is far —very far—from good enough, but there are signs that the EPA now takes its responsibility to protect the public health more seriously than perhaps it once did. It is abundantly clear, however, that despite the improvements that have been made, the vast bulk of our toxic waste problem will remain with us for years to come.

But mostly, have learned how little we really knew about how best to rid ourselves of this mess. Six years after the Superfund Program began, and 8 years after the Emergency declaration at Love Canal, we still do not have good methods for cleaning up many of these hazardous sites—including the one at Love Canal.

Today, unlike 1980, there are a few things that we know we can do, to make the best of this situation.

First, we can act decisively to reauthorize this program before the existing program is altogether lost.

Second, we can provide a responsible sum of money for the next 5 years to keep these cleanup efforts proceeding. The package of taxes that the funding conferees have finally produced will allow this and is deserving of our support. Although there are portions of it I do not like, particularly the ill-advised oil import tariff, and would have preferred a "waste end" tax on the disposal of hazardous wastes this financing package is necessary and adequate to the task, and I urge all of my colleagues to support it.

Third, we can refine the program based on what we have learned over the last 5 years; this bill does so admirably. By giving further guidance to EPA, better defining the standards and procedures to be followed in remediation, and providing money at levels more realistic than those we specified in 1980, we go far to improve the prospects for our Nation's well-being.

And fourth, we can establish a program to help give us what we do not now have, new technologies that work in the field, to help us to do the job more effectively in the next 5 years. Mr. President, this bill includes a provision I authored, along with my colleague Mr. TORRICELLI in the House, to establish a program of applied research and development within Superfund to do exactly that. It will give us the tools to do the job properly.

This new program will advance our knowledge of how best to cleanup hazardous waste sites. Primarily a field demonstration program, it gives EPA the authority to try promising new technologies at Superfund sites. With this amendment, they are directed to do so where it makes sense to do so.

Mr. Chairman, nothing makes more sense than Congress reauthorizing the Superfund Program with the solid, sensible legislation we have before us, and with dispatch. The citizens of Love Canal and communities across the country are still waiting.

Mr. STAFFORD. Mr. President, I now yield to the assistant majority leader, Mr. SIMPSON.

The PRESIDING OFFICER. The assistant majority leader, Senator SIMPSON, is recognized.

Mr. SIMPSON. Mr. President, it was my privilege to serve as a member of the conference committee on Superfund. I said "privilege"—for it was not always fun. In fact, it was kind of a grisly experience, actually. That is grisly with an "s" instead of a "z," and maybe it should be both.

But I want to commend our chairman, Senator STAFFORD, who was extremely patient, as we went through some pretty heavy water on that one. I have never seen a more remarkable bipartisan approach to a very tough issue. The conference started on a note in the House of a really crashing kind of activity. Chairman DINGELL was superb, fair, tough. I have learned to have great respect for that gentleman. He meets all of the attributes of the reputation we know of him. It was a treat to work with him.

I want to say that Senator BENTSEN was extraordinarily patient, along with Senator STAFFORD; GEORGE MITCHELL added a great deal to the effort. In fact, there were times with his remarkable ability to probe and zero in on things that he came up with solutions to things that we were just enmeshed in. I want to commend my friend from Maine. DENNIS ECKART, of Ohio, who was a splendid participant, and a very bright man that followed it, all so thoroughly; and Congressman DAN GLICKMAN; Congressman NORM LENT, from New York; and then, of course, STROM THURMOND, our remarkable Judiciary chairman, because we had judiciary issues before us as well as environment and public works issues.

Senator LAUTENBERG, too, gave a great bit of assistance in his unique and spirited way. I have been in a lot of conferences. There have been a lot of conferences where you get in with the House and you get hammered around pretty heavily. This was an open, direct, and sometimes a confrontational conference, but it was all very worthwhile. This is good piece of legislation.

I hope this administration will not think in any way of vetoing this package. I do not say that as a threat. I say it as total reality. If we are going to mess around with this one, after what we have just been through yesterday on South Africa, we will never see anything like it again. It will not come again. The chemistry and the dynamics will not be there to get this kind of Superfund next year. Lots of things could change. I am not talking about parties. I am talking about the whole scheme.

My commendations also go to Senator PACKWOOD, and again that steady Senator has done his usual marvelous job. I think it would be a very bad mistake if the President of the United States were to veto this—may I be yielded an additional 30 seconds?

Mr. STAFFORD. I yield to the Senator an additional minute.

Mr. SIMPSON. I glean the excitement in the chairman as I refer to avoiding veto and I thank the chairman.

So in this additional minute I say honestly that there will be a great misreading of the intent of this body if there is any mention or the actuality of veto. The funding is there. It is not what we all like. But it does save some industries that have had to take the whole load before. I think it is balanced. I think it is fair. But the programmatic changes are what is going to bring about the cleanup—the cleanup we all ask for—and then good release language, de minimis language, and altogether a very proper scheme.

I just tell you again it was a great

privilege for me to serve on that conference committee, and a great treat to see a bipartisan result such as we have before us. It is a good package.

I thank the chairman, and I thank the ranking member.

Mr. President, I am pleased to rise in support of S. 2840, the Superfund reauthorization bill which I have cosponsored, along with Senator STAFFORD and other members of the Environment and Public Works Committee.

This legislation is the result of a tortuous legislative process. The struggle for reauthorization began in 1984, and it became more pressing in late 1985, when the program's taxing authority expired. Now, nearly a year later, we are considering a complete reauthorization—the Senate Finance Committee and the House Ways and Means Committee have worked out their difference by crafting an intelligent Superfund taxation proposal.

The Environmental Protection Agency has been given an impossible task: To clean up the Nation's hazardous waste sites without clear congressional guidance on what the new statutory ground rules will be. This legislation, which is the result of more than 9 months of House-Senate conference activity, had a great deal of participation from the Administrator of EPA, Lee Thomas, who assures us that it is workable. While all of us, including Mr. Thomas, would have preferred different outcomes on various parts of the legislation, we came to a conclusion and we now should strive to let EPA do its work. When one considers that the program has been under a cloud since the public problems of its stewardship in 1983, and then was revamped by Lee Thomas in his role as Assistant Administrator for Solid Waste in 1983-84, and was then caught up in the congressional reauthorization maelstrom since that time, one can see that the troops over EPA should be given the time to put together the new program as soon as possible. Since this legislation includes many areas in which EPA will have to have management adjustments to meet new tasks, it is critical that we give them the tools to finish the job of making the Nation safe from the effects of past hazardous waste disposal practices.

I would like to bring attention to several provisions of this legislation that are of particular importance, beginning with the new provisions for health authorities.

As my colleagues may remember, I have had the challenging task over the years of working very hard on issues related to toxic torts and victims compensation in Superfund, as well as in the nuclear arena and in the agent orange debate. No set of questiions is more important to me than these, because of the profound and direct implications our legislation can have on the public health and on the various mechanisms our society relies upon to compensate those in need—ranging from the tort system to various social insurance programs.

In 1985 I worked diligently with my friend and colleague Senator GEORGE MITCHELL, in the hope that we could come to agreement on a limited, trial program of victim assistance in lieu of a Federal cause-of-action in tort, as some had previously suggested might be appropriate in the Superfund context. Despite our best efforts, I eventually decided to oppose the inclusion of the program in Superfund, and I supported Senator ROTH's admirable and successful effort to delete the program from S. 51 on the Senate floor. Similarly, the House of Representatives rejected a floor amendment from my good friend from Massachusetts, Mr. BARNEY FRANK, which would have gone further and established a Federal cause-of-action in tort as part of Superfund, combined with changes in the Federal rules of evidence to make it easier for plaintiffs alleging injury from hazardous waste to offer information into evidence beyond what is now admissible or relevant.

I mention the background here because it is important in understanding congressional intent with respect to the various health studies which the Congress is directing EPA and the Centers for Disease Control to produce at Superfund sites in the future. I supported these provisions because they hold the promise of more knowledge in the future about the health effects of hazardous waste sites, and the relative contribution of such sites—when compared with other factors—to the various negative effects on public health generally. These provisions of the legislation do not change the Federal rules of evidence, nor will they provide information likely to establish legal causation in cases involving individuals alleging injuries from hazardous waste site exposure. The problems of multiple causation from various chemicals acting together, or combined with life-style or genetic factors, will continue to bedevil questions of toxic compensation.

I supported the new health authorities wholeheartedly as one means toward developing information on potential health effects from waste sites. I am most hopeful that they may begin to move us toward the first steps of better knowledge of potential associations between waste site exposure and potential group health effects, and I strongly emphasize our intent that they not be used in toxic tort cases alleging individual injury where such information would not be admissible or relevant under existing rules of evidence.

I would also like to briefly discuss the new provision on settlements that was agreed to in conference. As sponsor, along with Senators DOMENICI and BENTSEN, of the Senate settlement policy amendments which were unanimously supported by the Senate last year, I was naturally disappointed that not all of the provisions of the Senate bill made it into the final conference report. But I am very heartened by the improvements which the conference made in the settlement process, and I believe that the Congress has sent a strong signal to EPA and to the Department of Justice that we expect increased numbers of settlements with potentially responsible parties.

There is not doubt that the immense transaction costs generated under Superfund—meaning lawyers' fees and the many technical and scientific studies required in litigation—have come to symbolize the worst excesses of the American legal system. Senator DOMENICI quoted Dickens' "Bleak House" in describing it last year, and he was right. We simply must work to have more societal resources spent on necessary and effective cleanup of Superfund sites, and less on convoluted litigation which merely extends any public health threat that exists from these sites.

The new settlement provisions retain a great deal of discretion for the Government in Superfund cases, while moving EPA toward adjustments in its enforcement outlook. EPA is required to establish guidelines for the development of nonbinding preliminary allocations of responsibility designed to make settlement more likely by taking the all-important first step of providing a reliable context in which settlement negotiations can begin in earnest. In particular, we expect that such procedures will get all sides "off the dime" at the many multiparty sites remaining to be cleaned up.

Further, the Congress has provided that EPA develop a numerical target representing a substantial offer, so that potentially responsible parties will have a specific goal to aim for in seeking settlement. Further, where the Government rejects an offer meeting this criterion, we have provided for signoffs in Washington by officials at the EPA and the Department of Justice. This will help the Congress to provide effective oversight over the operations of the new process, and will also help the EPA and Department of Justice by providing continuing congressional guidance.

If EPA and the Department of Justice take full advantage of their congressional defined authorities—to provide mixed funding, to speed the cases of de minimis parties who can clog the system, to prepare allocations of responsibility, and to provide meaningful releases from future liability for potentially responsible parties generally who have acted in the public interest—then we shall have a dramatically improved Superfund Program. I am hopeful that under the strong leadership of Lee Thomas, who has assured me that he will utilize these authorities to the fullest extent, an example of strong and creative enforcement will be set which will serve us well long after the strident Superfund debates of today are muted and forgotten.

I do have one final comment regarding the amendment requiring EPA to utilize available information when considering mine waste sites for inclusion on the national priority list [NPL], available information means more than information that EPA has in its files. This term is intended to refer to any relevant and reliable data or information, whether generated by EPA, State or local governments, or by the private sector. The goal is to get, use, and weigh the best site-specific and waste-specific data to accurately assess relative risk posed by each site and release under review, insofar as possible.

In closing I would add that it was a distinct pleasure to work with BOB STAFFORD, our hardworking committee chairman, and with the very fine House Members, especially Chairman

JOHN DINGELL whom I have the deepest admiration for and Congressman DENNIS ECKART who is one of the brightest and sharpest House Members around. I also enjoyed working together with LLOYD BENTSEN, PETE DOMENICI, GEORGE MITCHELL, DAVE DURENBERGER, JOHN CHAFEE, PAT MOYNIHAN, FRANK LAUTENBERG, and MAX BAUCUS. All of the Senate conferees devoted many, many hours to work on the difficult Superfund issues and all made significant contributions to conference meetings. Special recognition is due my dear friend, BOB STAFFORD, for his tireless efforts to get Superfund reauthorized and I commend him for his diligence and constant good nature in this long and arduous effort.

Mr. BENTSEN. Mr. President, I would like——

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Texas.

Mr. BENTSEN. I would like to recognize the senior Senator from New Jersey, who represented not only his State but the Nation on his concerns.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. BRADLEY.

Mr. BRADLEY. Mr. President, at long last we consider the conference report on the Superfund reauthorization bill. This is truly the most important and pressing environmental issue that we face this year. The reauthorization of Superfund is crucially important to New Jersey and the Nation. Once again, time is of the essence—the program is on hold due to lack of funds. There is no longer reason, however, for the stop-gap measures. This Superfund reauthorization bill ensures a substantial program for the next 5 years and I urge my colleagues to support it solidly. We must send a strong signal to the White House that the threats of a possible veto are inappropriate and will be ultimately ineffective.

In March 1983 I offered the first Superfund reauthorization bill to be introduced in the Senate. I was concerned that the mismanagement and abuse of the Superfund Program by the previous leadership of the Environmental Protection Agency had tarnished the perception of our commitment to continuing and completing the cleanup of hazardous waste sites that threaten the health of citizens around the Nation. I wanted to demonstrate to the People that their Government had not reneged on its commitment, made to them with the passage of Superfund in 1980. My concern remains. Today we have the chance to make good on that commitment.

The bill we are considering today is a good bill. The first part contains programmatic changes to the existing Superfund law that strengthen and improve the operation of the program. The bill has strong community right-to-know provisions and cleanup standards. It sets up a program for dealing with leaking oil storage tanks. Also included are provisions that I proposed with Senators MITCHELL and LAUTENBERG that deal with the threat imposed by indoor air pollution and, in particular, radon gas.

The second "half" of the bill is the revenue title and the financing committees faced a real challenge here. The original bill was funded at $1.6 billion. The reauthorization requires at least $8.5 billion.

The original law obtained most of its revenues from a tax on petroleum and chemical feedstocks and the remainder of the revenues from the Federal taxpayer. Neither the feedstock tax nor the Federal budget provided any room for increasing Superfund revenues. Many legislators backed a new tax—a tax on wastes as they are generated. Indeed, such a waste-end tax appeared to have merit—I included one version of the waste-end tax in the bill I introduced. The principal problem was that the waste-end tax was not capable of producing anywhere near the required revenues.

Last year, I offered the first broad-based tax to be introduced in the Congress. I proposed to tax all corporations making over $50 million per year at a rate of 0.08 percent (.0008) of their corporate net receipts. Conventional wisdom had it that it was politically risky to propose a new tax on businesses, but it seemed to me that no other alternative existed if Superfund were to be reauthorized at a level of funding sufficient to do the job over the next 5 years. As it turned out, the Superfund conferees agreed with me and not the conventional wisdom.

Mr. President, I would like to thank all members of both committees, the chairman, and the members of the conference. I would also like to offer special recognition to my colleague, Senator LAUTENBERG, for his effective hard work on the Environment and Public Works Committee and in conference.

We made a promise 6 years ago to clean up the thousands of hazardous waste sites that blight our land. The creation of the Superfund in 1980 told the American people that the Government recognized a mammoth problem, a continuing threat to public health, and that it could take the necessary steps to address that problem.

For a while the American people were wondering what happened to that promise. They see only slow progress cleaning up the sites in their communities. They saw the first several years of the Superfund's existence wasted by an EPA willing to use the Superfund for political favors instead of for cleaning up hazardous waste. They saw the program limp along this past year on a series of temporary extensions, as we were unable to reconcile our differences of opinion. Can we blame them for their skepticism?

We must reaffirm that promise we made back in 1980. We have the chance to make good on it now. We cannot wait any longer.

Superfund taxing authority expired over a year ago and forced the EPA Administrator to halt all but emergency work on Superfund sites. This program is so vital to public health and confidence in Government cannot be allowed any longer to lapse.

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Today, with this reauthorization, it will not lapse. We will keep our word to the people of New Jersey and the Nation. We will clean up toxic waste sites.

The PRESIDING OFFICER. The Senate is not in order. Senators are asked to take their seats. Senators wishing to engage in conversation are asked to retire to the cloakrooms on both sides of the aisle. Who yields time?

Mr. STAFFORD. Mr. President, I yield 2 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I want to thank the distinguished chairman for yielding me 2 minutes.

Mr. President, I would like to clear up some uncertainty concerning the Environmental Protection Agency's authority to obligate funds from the Superfund trust fund and other trust funds created by this legislation. Current law and this conference agreement on H.R. 2005 are vague on this point. To date, EPA only has expended funds from Superfund to the extent those expenditures have been made available through appropriations acts. I would like to ask the distinguished chairman of the Senate Environment and Public Works Committee a question. Is the spending authorized by current law and in the conference report on H.R. 2005 subject to annual appropriations action?

Mr. STAFFORD. Yes. Our intention is that the expenditures authorized by the conference report on H.R. 2005 be subject to annual appropriations action.

Mr. DOMENICI. I thank my friend.

Mr. President, I had the privilege of serving on this committee for 14 years. On the issue of Superfund I served for almost as long, and on the conference for a period of time it seemed almost as long. But 9 months ago I did not think we would be here. It is because this is a major American issue of high, high significance and many Senators were dedicated to resolving it and many House Members were. We were able to mold two very diverse bills, as complicated as any piece of legislation that will ever pass the U.S. Senate, into something that a number of Senators on both sides of the aisle and a number of House Members from both sides with different ideologies have put their signatures to.

I believe we will have problems with Superfund, but clearly we will have far worse problems if we do not get on with adopting this law. Hopefully the President will sign it and get our EPA Director to start the difficult, onerous, and tedious job of cleaning up about 50 years of very, very difficult environmental problems for our country. I hope in the years to come we will find success from this bill in one of the most serious environmental problems in our country. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. How much time remains?

The PRESIDING OFFICER. The Senator has 3 minutes and 12 seconds remaining.

Mr. CHAFEE. Mr. President, the drama that may become known as the perils of Superfund is about to enter the final scene. The long awaited conference report has been produced.

The days, weeks, and months—the years of work that have gone into this effort are almost over. As one of the conferees on this bill, I hope our work is done.

For too long, too many people have been playing politics with the health and welfare of our constituents. Superfund has become a political football. Lobbyists on both sides of the issue, the administration, and Members of Congress have engaged in a game of brinkmanship. Notwithstanding the considerable progress that has been made to date, this abhorrent game continues.

The final scene, the climax of this drama will come when the bill reaches the White House. Will the President sign this bill? I don't know. But I do know that he should sign it and will be making a serious mistake if he doesn't sign it.

The importance of getting the money flowing back into the field—back to where it can be put to work actually cleaning up the thousands of toxic waste sites that are riddled throughout the country—cannot be overstated. Short-term extensions of funding are not the answer. They are merely Band-Aids and Band-Aids will not help a program that is dying. Putting off resolution of our differences will not make our task any easier nor will it help those who live near these toxic dumps and need action today. We need a healthy, long-term infusion of money to get these sites cleaned up as soon as possible.

The officials representing this administration have consistently threatened a veto if we adopted a funding package they don't like. Well, Mr. President, I don't expect them to like this one. Indeed, there are elements of it that are seriously troubling to me. The differential tax rate on imported versus domestic oil, for example. My willingness to accept this portion of the bill is conditioned on an understanding that this is not a precedent. Accepting a differential of a few pennies per barrel is a far cry from the oil import fees that some Members of this body have advocated for other purposes. I will continue to oppose such fees.

The funding proposal before us today derives significant revenues from the petrochemical industry. This is consistent with the principle of Superfund: the principle that the polluter pays. Inclusion of a broad-based corporate tax and revenues from the General Treasury is not inconsistent with the polluter pays principle and reflects the fact that the problems of toxic pollution are societal problems. If this principle were strictly adhered to, all polluters that can be identified will be forced to pay for the cleanup of sites containing their wastes. The enforcement program is the place to make sure that the polluter pays.

Mr. President, under the leadership of the chairman of the Committee on Environment and Public Works, Mr. STAFFORD, the conferees on the nontax portion of Superfund took two bills—bills that approached 1,000 pages when put side by side—and came to agreement on a substitute bill that represents the best features of both original bills.

Our chairman worked long and hard for this legislation. Despite innumerable obstacles, he never gave up hope or slackened in his tireless efforts to achieve the goal of a new, improved Superfund. For months and months, the conference meetings went on and on. At each and every meeting—small private sessions or large public meetings—he was there. Anyone who cares about this program is indebted to the senior Senator from Vermont, a gentleman in the truest sense of the word.

Approval of this legislation today will put into place a new, improved Superfund program. Assuming enactment of this bill, we will have a new law that corrects many of the problems and weaknesses that have been discovered since Superfund was first created in 1980. For example, the conferees have agreed to add to the law and this legislation includes the following key provisions:

Funding: The program is extended for 5 years at a level of $8.5 billion—an increase of more than fivefold over the old law which provided only $1.6 billion for the first 5 years.

Underground tanks: A new program to clean up leaking underground storage tanks is established, funded at $500 million over 5 years. This program is designed to address problems such as those that plagued Canob Park in Rhode Island.

Community right to know: A new program requiring companies using more than 25,000 pounds of toxic chemicals to disclose and develop emergency plans for 400 such toxic chemicals is added.

Schedules: The EPA is required by law to begin at least 375 cleanups within 5 years.

Health: The Federal Government is required to conduct health studies at all Superfund sites and to conduct laboratory tests of at least 275 of the most dangerous chemicals found at sites.

Citizen suits: Citizens are given an express right to sue to force the Federal Government to perform mandatory duties imposed under the law.

Victims rights: Language is included which gives victims of toxic chemicals relief from restrictive State statute of limitation laws, many of which require an individual to initiate a lawsuit within a few years of exposure to a toxic substance even though the effects of exposure may not show up for decades. Under the new law, the statute of limitations will run from the time an individual discovers there is a cause of action for suit, rather than from the time of actual exposure.

Cleanup standards: Rigorous new environmental cleanup standards which will require the Environmental Protection Agency to comply with other Federal environmental standards in cleaning up toxic waste sites and which will, in many cases, require that EPA adhere to tougher State standards where a State has more stringent regulations are added by the bill. This deals with the issue of how clean is clean? In the context of this provision, EPA will be required to remove contaminated dirt at the Picillo dump site in Coventry. This provision was added at my insistence after the State of Rhode Island was forced by EPA to go to court last December in an effect to get EPA to remove the contaminated dirt.

Siting of hazardous waste facilities: A new provision that I sponsored will require each State to devise a plan within 3 years for the disposal or treatment of the toxic wastes generated within the State. The objective is to force States to provide safe and adequate facilities for toxic and hazardous waste. States will be allowed to pool their resources to provide joint disposal or treatment facilities. States failing to comply will lose the right to all but emergency cleanup funds from the Superfund.

These are tough, realistic provisions that make major improvements to the Superfund law. They are significant changes that will improve the Government's ability to respond to problems presented by toxics that are released or threatened to be released into the environment and will force the Government to upgrade the quality and permanent nature of its responses. This legislation will also provide citizens living near these sites with the tools needed to assure that these sites are being properly and adequately cleaned up. For example, EPA will no longer be able to argue that they can ignore Rhode Island's more stringent clean up standards at the Picillo site in Coventry. New cleanup standards designed to answer the question, "how clean is clean?", will force EPA to do more than simply install a fence around the site to keep people away and a cap over the site to keep rain off the site. Over the past 5 years, this capping has become EPA's standard method of cleanup, it has become the rule. It will now be the exception.

Important legislative history explaining the conference agreement and the statutory language of this legislation is contained in a statement of managers. To supplement that statement of managers, several key points need to be made.

SITING OF HAZARDOUS WASTE FACILITIES

A critical step in the implementation of a rational, safe hazardous waste program is the creation of new facilities employing the most advanced waste management technologies. But to establish newer, improved facilities, sites on which these facilities can operate must be found and made available. Although most States have enacted or have pending some form of siting legislation, few, if any, have developed policies and siting programs that will assure continued facility capacity in the long term. Recognizing that, as a general rule, States are not moving aggressively to avoid the creation of future Superfund sites, an amendment on siting of hazardous waste facilities was adopted by the committee.

This section of the bill provides that, effective 3 years after enactment, a State shall not receive Superfund money for remedial actions unless the State provides assurances that there will be adequate capacity and access to RCRA-approved facilities for the treatment or disposal of all of that State's hazardous waste (other than those wastes that will be recycled) for the next 20 years. Merely having a plan on paper is insufficient. There must be reason to believe that the assurances are real, that the plan will work.

Such assurances must be made to the President. The President is expected to delegate the Federal responsibilities under this amendment to the Administrator of the Environmental Protection Agency.

The availability of funds for "removal actions" is not affected. The short-term, emergency cleanup of, for example, a road side spill or a stack of drums that are about to explode could proceed. What will be withheld are funds for "remedial actions," the long-term, permanent cleanup of sites on the national priority list.

To avoid a cutoff of funds, each State is required to develop State policies and siting programs that will make the best use of existing facilities in the short term and will assure continued facility capacity in the long term. The details of the siting process will differ depending on the circumstances of each State.

A site in every State is not required. In some cases, multi-State efforts may be appropriate. Use of binding agreements through interstate compacts guaranteeing access to a facility is only one example of how a State may provide the requisite assurances. State or local ownership and operation of facilities or contracts with private facilities may also suffice.

The rational for this requirement is straightforward: Superfund money should not be spent in States that are taking insufficient steps to avoid the creation of future Superfund sites. Pressures from local citizens place the political system in an extremely vulnerable position. Local officials have to respond to the fears of local citizens. The broader social need for safe hazardous waste management facilities often has not been strongly represented in the siting process. A common result has been that facilities have not been sited, and there has been no significant increase in hazardous waste capacity over the past several years.

In 1976, the Resource Conservation and Recovery Act [RCRA] was passed, mandating the construction of needed hazardous waste facilities and placing the responsibility for siting the facilities with the States.

Unfortunately, when RCRA was first passed, Congress failed to anticipate the intensity of public opposition to new and expanded waste management facilities. While everyone wants hazardous waste managed safely, hardly anyone wishes it managed near them. This is the NIMBY syndrome [not in my backyard]. Yet if the RCRA and Superfund programs are to work—if public health and the environment are to be protected—the necessary sites must be made available.

This is not a new issue. In 1976, RCRA directed the States to develop plans for the management of their wastes, including hazardous wastes. In 1980, EPA, the National Governors' Association and numerous other groups and institutions produced reports, handbooks, and resolutions on the siting issue.

Section 104 of Superfund already requires that each State assure the availability of a RCRA approved facility for management of materials removed from a site before remedial action can begin. Unfortunately, that condition has been largely ignored by EPA and the States.

Most States have enacted, or have pending some form of siting legislation. Some have chosen to establish siting approval boards; some have chosen to authorize preemption over local zoning laws; some have authorized State acquisition, operation and maintenance of sites through existing institutions or through quasi-public corporations. Merely having enacted such legislation, however, will not satisfy the requirement of this section. Each State must provide assurances that their legislative program can work and will be used.

There are a number of obstacles to siting new hazardous waste management facilities. These include:

First, lack of cooperation among interested parties who distrust one another's motives and doubt the willingness of the other parties to make any substantial concessions to alleviate their concerns. Use of compensation, mitigation or other measures such as land value guarantees or the posting of bonds to finance continued water supply testing and the like might help alleviate some of these problems.

Second, lack of reliable, objective information or criteria for evaluating proposals and sites and citizens' distrust of technical information provided by government or industry.

Third, insufficient public perception of the need for new treatment facilities.

Finally, the most distressing problem, leadership by Government officials at all levels is sorely lacking.

A successful siting program should recognize three key principles:

First, a complete technical analysis of all proposed sites is essential prior to the selection of a particular site. This analysis should take into account both environmental effects (for example, from the hydrology, geology, ecology, and so forth) as well as factors based on the proximity and relation of the facility to residences and institutions.

Second, site selection must be accompanied by full public participation. This involvement should start at the beginning of facility planning, and should continue through the site selection and approval process. It should be accompanied by a broad-scale public education effort, since the public needs to become a knowledgable partner in site selection decisions.

The opposition of the public stems in part from the fact that the procedures for citizen involvement have been neither well thought out nor carefully applied. Further, the standard mechanism for involving the Public—the public hearing—routinely becomes a crowded, highly emotional exercise in mob psychology. In addition, the media often highlight the fears of the opponents, making rational decisions even more difficult to make.

Third, the process of site selection should find a way to transcend blanket local vetoes. No community should be able to remove itself from consideration on political grounds alone. Everyone must take responsibility for assuring that adequate sites are available.

CLEANUP STANDARDS

Cost effectiveness requirement: The legislation retains the "cost effectiveness" requirement of current law. An analysis of cost effectiveness begins only after a remedial action has been selected in compliance with the health, permanent treatment and other standards, requirements, criteria or limitations imposed by this new law. As under current law, the cost effectiveness requirement does not apply to the selection of a remedial action but rather applies to choosing the least costly alternative method of effectively implementing a remedial action once one has been selected. For example, the selection of a remedial action might involve a choice between various onsite containment alternatives and a permanent treatment technology. Permanent treatment technologies must be chosen whenever they are feasible and achievable. That is a separate requirement that must be met before the cost effectiveness test is applied. Otherwise, remedies such as a cap over the site and a slurry wall to prevent further leakage would always be selected as a cheaper alternative. Such a result, and a decisionmaking process that produces such a result, would be contrary to the clear intent of Congress and illegal.

Once the remedy has been selected, the cost-effectiveness requirement is applied to its implementation. Implementation of a remedy includes choosing the least costly methods which, and contractors who, will effectively carry out the chosen remedy.

Criteria to be considered in determining cost-effectiveness includes—in addition to the total cost of implementing the remedy projected by each potential contractor—the past record of performance of the persons or firms competing for the project; the relative merits of the various proposals submitted by such persons or firms; and, where permanent treatment technologies are not utilized, the degree to which expenditure of larger sums today will enhance the durability of the remedy and reduce the need to spend additional sums in the future.

Compliance with the National Contingency Plan: The legislation states that remedial actions selected by the President shall, to the extent practicable, comply with the National Contingency Plan [NCP]. This language is intended to assure that alleged failures to comply with the NCP shall not be available as a defense to any liability in an enforcement proceeding brought under section 106 or 107. The language is not intended to provide any independent authority to EPA or other agencies to fail to apply, to overlook, ignore or waive any standard, requirement, criteria or limitation established under the law.

Permanent treatment: The legislation establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discreet units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

The extent to which a particular technology or solution is feasible or practicable is not a function of cost. A determination that a particular solution is not practicable because it is too expensive would be unlawful. Tough choices on the basis of cost must be made under the fund balancing test that is set forth elsewhere in this section of the bill, not under the guise of being not practicable.

"Permanent treatment or alternative technologies" mean treatment methods that permanently and significantly reduce the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants. Significant reduction is the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them (for example incineration) or neutralizing them (for example application of chemical or bioengineered neutralization agents). Mere reductions in volume of toxic and mobile substances by, for example, dewatering the substances, would not, by itself, constitute effective use of permanent treatment or alternative technologies. Implementation of the technologies required by this amendment should, on a permanent basis, minimize risk to human health and the environment.

"Permanent solution" means the application of permanent treatment or alternative technologies to hazardous substances, pollutants and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a risk to human health or the environment on a permanent basis.

It is a major goal of the Superfund Amendments and Reauthorization Act of 1986 to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions whenever they are feasible and achievable. The implementation of such solutions to sites cleaned up under the program is the only way to assure the successful completion of the cleanup effort.

To carry out the goal of implementing permanent technologies and permanent solutions wherever they are feasible and achievable, the legislation requires that whenever a remedial action is selected, such technologies and solutions must be assessed. Such assessments shall take into account—at a minimum—the following factors:

1. The long-term uncertainties associated with land disposal. Such uncertainties include the probability that any land disposal facility, even one employing the best available technology, will eventually leak; the institutional uncertainties associated with assuring that cleanup resources will be available when leakage occurs; and the uncertainties inherent in predicting the size and location of future populations.

2. The goals, objectives, and requirements of the Solid Waste Disposal Act. For example, that act provides that the land disposal of hazardous wastes is the least favored method of regulated waste management.

3. The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents. It is these characteristics which necessitate the use of permanent treatment technologies at Superfund sites rather than containment. Since all containment systems are expected to ultimately fail, it is important to assess the hazard timeframe of substances at a site when selecting a remedial action and consider the fact that some substances are transformed to toxic byproducts and become more toxic over time.

4. Short- and long-term potential for adverse human health effects. The assessment should consider the hazard posed by each available remedial action to people who are or may be exposed to hazardous substances, pollutants and contaminants as a result of the remedy chosen. For example, the less permanent the remedy, the greater the potential for adverse health effects as a result of continued or renewed releases over the long-term.

5. Long-term maintenance costs. Permanent solutions may cost more initially, but will involve little, if any, long-term maintenance costs such as those associated with less than permanent solutions.

6. The potential for future remedial action costs if the alternative remedial action in question were to fail. Once again, if the initial remedial action that is implemented is a permanent solution, the costs of repairing failures associated with nonpermanent, con-

tainment remedies will be avoided.

7. The potential threat to human health and the environment associated with excavation, transportation and redisposal, or containment. This factor is really a specific subset of the overall health effects consideration incorporated in the assessment and is designed to assure that the selection of remedy take into account possible risks associated with expanding the populations exposed to hazardous substances, pollutants or contaminants when such substances are moved offsite as well as the risks to populations that result from nonpermanent, onsite solutions such as containment. The legislation does not require a quantitative, comparative risk assessment, but rather contemplates an objective consideration of all of the factors affecting or potentially affecting human health.

Whenever the President selects a remedial action that does not implement a permanent solution, or that does not implement a permanent or alternative treatment technology, he must explain his reasons for rejecting such a solution, or for failing to implement such technologies. Such explanation shall, at a minimum, include a discussion of the permanent solutions examined and rejected, and an analysis supporting the proposed solution. The explanation shall be subject to public comment as part of the remedial investigation and feasibility study. The public must know of the alternatives being considered before a decision is made. The Government is not allowed to operate in the dark. The issues of remedy selection and use of permanent solutions are central to this legislation and cannot be ignored.

To encourage the development and implementation of innovative permanent treatment technologies, the legislation permits the President to select such technologies whether or not they have been achieved in practice at other similar sites or facilities. A technology still at the experimental phase could, under this provision, be deemed cost-effective when compared with other permanent treatment technologies, as this is a technology-forcing provision. The legislation further permits the President to take into consideration whether residents of the community around a site endorse, in general, implementation of an experimental technology.

Periodic review: The legislation states that whenever the remedial action at a site involves an onsite remedy that does not result in a permanent solution so that hazardous substances, pollutants or contaminants are left at the site, there is a mandatory duty that the President shall conduct a periodic review of the continued effectiveness of such remedies and report the results to Congress.

In determining what actions to take as a result of a periodic review, the President shall consider whether permanent or alternative treatment technologies have been developed since the remedial action was first selected and shall implement such technologies wherever possible.

The periodic review provision is intended to assure that Superfund cleanups keep pace with developing technologies and that remedial actions are upgraded to take advantage of such developing technologies. It is a technology-forcing provision. The ultimate goal of the Superfund program must be to implement permanent solutions at all National Priorities List sites. The best way to accomplish this goal is to require periodic review and to assure that sites are not removed from the ambit of the program until such solutions have been implemented.

General Health Standard: The legislation states that any remedial action selected or required under sections 104 or 106 must—at a minimum—assure protection of human health and the environment. The general standard of "protection of human health and the environment" is modeled after the standard that applies under the Solid Waste Disposal Act. The legislation requires that this standard be the minimum standard met by any Superfund cleanup. Compliance with standards promulgated under the authority of other laws will not necessarily assure compliance with this general standard.

Identification of Specific Standards: The list of Federal and state laws included in the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria or limitations that must be applied to Superfund remedial actions. If the President or the courts determine that other, unlisted laws contain standards which are legally applicable, or relevant and appropriate, such standards shall apply to such remedial actions.

Legal applicability: The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides that legally applicable requirements established under any other Federal or State law are preempted only where explicitly stated. For example, all requirements contained in subtitle C of the Resource Conservation and Recovery Act (RCRA) currently apply as a legal matter to onsite remedial actions conducted under CERCLA, when for example, the facility is a facility already covered by RCRA or hazardous wastes are exhumed and stored, treated or redeposited at the site.

This legislation reiterates the intent of current law that, except as explicitly provided, the specific standards, requirements, criteria or limitations which are already legally applicable to Superfund sites and cleanups must be applied to remedial actions selected or required under sections 104 or 106 after the date of enactment. As such, RCRA facilities must meet RCRA standards, irrespective of other provisions in this law, even if the site is listed on the national priorities list.

Relevance and appropriateness: The legislation states that standards, requirements, criteria or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate."

The importance of the principle that the purpose for which a standard was developed should always be considered in determining its relevance to Superfund cleanups cannot be overemphasized. The purpose of the standards developed under the Safe Drinking Water Act, for example, are to protect people from drinking contaminated water. The act applies these protections at the tap. In order to effectively utilize these standards in selecting a remedial action at a Superfund site, they cannot be applied by the use of extrapolations that project the condition of water at some hypothetical tap, but must be applied wherever the contaminated water is found.

A central goal of the cleanup standards section of the legislation is to prohibit the "writing off" of potentially useful ground water supplies that have been contaminated by Superfund sites. Such natural resources are both finite and irreplaceable. The purpose of the Superfund Program is to reclaim such contaminated sources whereever possible.

Finally, in determining the relevance and appropriateness of standards, requirements, criteria or limitations, EPA should consider not only pathways of human exposure but the impact that contamination from a Superfund site has on the environment. Environmental contamination must be eliminated both to protect ecosystems and to prevent the public health threats that result from indirect exposure to hazardous substances, pollutants or contaminants. Perhaps the most obvious example of this latter phenomenon is contamination, by releases from Superfund sites, of habitat that is even remotely connected to the human food chain.

Water quality criteria: Water quality criteria typically contain three different exposure levels—or numbers—depending on whether the water at issue will be: First, consumed by people; second consumed by people and used to support aquatic life; or third, used only to support aquatic life.

In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially useable as a source of drinking water is contaminated by a water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption.

The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision affects the selection of the appropriate exposure level and does no mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

ALTERNATE CONCENTRATION LIMITS

This legislation sanctions, in certain circumstances, the use of a regulatory process for setting alternate concentration limits [ACL's]. As developed by EPA for use in the regulatory program under the Resource Conservation and Recovery Act [RCRA], the ACL process affords the owner or operator of a RCRA facility the opportunity to demonstrate that, in determining the level to which contaminated ground water must be corrected, some alternate level of contamination or cleanup, other than background, does not threaten human health and the environment. While such regulatory process remains in effect, this legislation would provide the same opportunity during the course of Superfund cleanups to potentially responsible parties or EPA under specified conditions. In theory, the ACL process may be used to show that a level of cleanup that is more stringent than either an existing standard or background is necessary to protect human health and the environment.

The first condition inserting the use of the ACL process in Superfund is that it should be used to relax a "background" standard of cleanup only when no other previously established standard or level of control; for example, water quality criteria or MCL, applies to the hazardous substance, pollutant or contaminant at issue. If any other standard or level of control is legally applicable, or relevent and appropriate, establishment of a separate, less stringent ACL is both unnecessary and improper.

A second condition limiting the use of ACL's is that they must be based on a point of human exposure that is located at the boundary of the Superfund facility, and no further. The facility boundaries are in turn to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site.

"Facility" is defined under CERCLA as the place where hazardous substances, pollutants or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination caused by a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility", where hazardous substances, pollutants or contaminants have come to be located. The remedial action called for in the RI/FS will then clean up the entire facility, and prevent future releases from such facility. Neutral or buffer zones which have not yet been contaminated therefore cannot constitute a "facility" at the completion of the RI/FS.

For the purposes of Superfund only, there is a narrow exception to the rule that the point of assumed human exposure used to establish an ACL cannot exceed the facility boundary. As discussed more fully below, the conferees recognized the unique circumstances surrounding Superfund cleanups and agreed to give Superfund special treatment that is not necessarily appropriate for RCRA corrective actions. The endorsement of ACL's to set cleanup levels less stringent than background is only for Superfund. The exception to the facility boundary exposure rule is similarly limited to Superfund. It is important to note that three conditions must be met before the exception from the "facility boundary rule" may be invoked.

First. The first is that the contaminated ground water at the site is known to feed into a source of surface water—that is, a lake or stream.

Second. The second is that, at the specific point where such ground water first enters the surface water, there is, or will be, no statistically significant increase in hazardous constituents, nor any accumulation of such constituents downstream. Such accumulation could occur downstream in either the water sediment or biota, due to bioaccumulation. This second condition can only be satisfied if there is sufficient attenuation of the contamination to provide for adequate dilution of the contamination in the ground water so that it cannot be measured at the first point where the ground water feeds into surface water and cannot be measured downstream from such point of entry.

Third. The third condition is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place and cannot be reversed for as long as the waste remains hazardous.

As suggested earlier, the conditional Congressional endorsement of a regulatory ACL process to establish less stringent ground water cleanup levels is limited to Superfund. Superfund cleanups are a special case. Our action in this act must in no way be construed as an endorsement of the process in the context of RCRA. Indeed, several members of the conference committee clearly stated the fact that the ACL process in RCRA is of questionable legality and, in their view, is not legal.

ACL's are not in the RCRA statute. They are a creation of EPA. The 1984 congressional reauthorization and amendments to RCRA cannot be viewed or construed as an endorsement of the current RCRA ACL process. Even though the process was out lined in very general terms in regulations in effect at that time, the process had not been used. Congress was not aware of the details of the process because it had never been used and the guidance documents setting forth the details of how it is to be used in RCRA were not published at that time. In fact, they are still not in final form.

The legality of the current RCRA ACL process to set less stringent standards is in question, in part, because the mathematical models used by EPA to project exposure levels and, more importantly, the assumptions that go into use of those models are so unreliable that decisions based on them are likely to be arbitrary and capricious.

By conditionally sanctioning an ACL process for Superfund that assumes a point of exposure no further than the facility boundary, we have expressly rejected EPA's use, to set less stringent standards, under RCRA and Superfund, of hypothetical exposure points beyond the facility boundary.

FEDERAL FACILITIES

This provision is intended to make clear that all guidelines, rules, regulations and criteria promulgated pursuant to CERCLA must be complied with by all federally owned facilities unless specifically exempted by this act or in accordance with the procedure of this act. It is specifically intended that Federal agencies be required to comply with all procedural and substantive provisions of the national contingency plan [NCP]. This includes the mandatory development of a remedial investigation/feasibility study to assure the adequate consideration of all relevant factors in choosing and implementing a remedy in accordance with the NCP.

This new provision on Federal facilities applies to all federally owned facilities at which hazardous waste is located, including those Federal facilities for which a response action, remedial action plan, other type of cleanup plan, implementation of a partial remedy or other activity affecting the site is currently under development. To the extent that the specific procedural and substantive requirements of the national contingency plan and this section have not been followed, a Federal entity must modify such plan or activity to comply. The only exception to this requirement is the limited grandfather for certain Department of Energy facilities.

Section 120 of the new amendments is intended to complement the substantial new cleanup authorities provided to EPA and authorized States in the Hazardous and Solid Waste Amendment of 1984 [HSWA]. In HSWA, for example, we required that an owner/operator of a hazardous waste facility requiring an operating or post-closure permit must clean up releases from any solid waste management unit within the property boundary of the facility as a condition of receiving the permit. This provision, codified as section 3004(u) of RCRA, applies to public and private facilities, including facilities owned and/or operated by Federal agencies. Similar cleanup authority applicable during interim status was codified as section 3008(h) of RCRA, and is also applicable to public and private facilities.

Some Federal facilities may be subject to section 120 and the corrective action provisions of HSWA because of RCRA related activity conducted at the facility. Section 120(i) reaffirms our intent that the HSWA corrective action provisions apply to Federal facilities in the same manner and to the same extent as private parties. In addition to the HSWA provisions, section 120 of the new amendments establish additional requirements for Federal facilities intended to quicken the pace of cleanup activities at these sites. These requirements include the establishment of minimum time frames for delineated response activities. These time frames may be shortened by EPA or an authorized State in the context of a permit compliance schedule or administrative order, pursuant to section 3004(u) or section 3008(h) of RCRA. EPA or the State may decide that such action is necessary to protect human health and the environment. Accordingly, where RCRA authorities are applicable, the listing of a site on the national priorities list or other response activities conducted pursuant to the new amendments does not and should not impair in any way the implementation of the corrective action authorities of RCRA. Similarly, the exemption from a requirement to obtain a permit for onsite response activity under section 121 of the new amendments shall not be used by RCRA facilities or EPA to circumvent the requirement of RCRA regarding permits for operation or closure of treatment, storage or disposal facilities and compliance with section 3004(u) of RCRA.

RECYCLED OIL

Section 114 of the final bill, relating to liability that attaches to the handling of recycled oil, was designed to deal with a largely speculative problem. A number of interests were concerned that, if EPA went through with a regulatory proposal to list recycled oil as a hazardous waste under RCRA, the problems of stigma and other perception problems that would result from the automatic trigger of Superfund liability that follows such a listing would effectively destory the oil recycling industry.

For the reasons set forth in the conference report, this amendment was adopted. However, it now appears that the Agency is about to abandon the RCRA approach and will choose to reply, instead, on Toxic Substances Control Act authorities. It should be noted that, by adopting this Superfund amendment, the Congress has neither endorsed nor encouraged such a regulatory approach. Moreover, if EPA fails to promulgate management standards for recycled oil under section 3014 of RCRA, this amendment to Superfund will not become effective. The failure of EPA to list such oil as a hazardous waste under RCRA will not solve the problem because Superfund liability may attach to the handling of oil that is a hazardous substance.

Nothing in this section shall affect or impair the authority of the President to take a response action pursuant to sections 104 or 106 of CERCLA with respect to any release or threatened release of used oil or recycled oil.

With respect to the amendment in this bill, it is recognized that some Government agencies have established collection facilities to accept delivery of small quantities of used oil from individuals. Such facilities that are established solely for this purpose will qualify as a "service station" under this agreement. However, these facilities may not be used to extend the amendment's special treatment to other Government facilities.

Finally, the conference report refers to the relationship between the corrective action requirements of RCRA subtitles I and those of subtitle C for underground storage tanks. Such tanks containing used oil which has not been mixed with other hazardous substances would generally fall within the meaning of petroleum tanks under the subtitle I response program. In responding to releases from such tanks, the EPA should use the authorities of subtitle I rather than authorities under Superfund or other corrective action authorities under subtitle C of RCRA. This formulation of the relationship between the various authorities is based on the current status of oil, used or otherwise, as a substance that is not listed as a hazardous waste. If, however, oil becomes subject to other rules of RCRA subtitle C as a hazardous waste, all of the provisions of subtitle C, including corrective action, would apply. Underground tanks containing such oil would have to meet the same requirements of subtitle C as other underground tanks containing hazardous waste, notwithstanding the separate regime under subtitle I.

Mr. THURMOND. The preenforcement review provision adopted by the conference is one of the most significant provisions developed during the reauthortzation process. I would like to present my interpretation to the chairman so that he can confirm whether my interpretation conforms with the intention of the conferees.

It is my understanding that the provision confirms and builds upon existing case law. In particular, the timing of review section ensures that Government and private cleanup resources will be directed toward mitigation, not litigation. The section is designed to preclude piecemeal review and excessive delay of cleanup. Interested parties will be able to participate early in a more regularized administrative process instead of making premature challenges in court to remedy selection or liability.

By its terms, this section establishes the circumstances in which courts will have jurisdiction to review response actions. Thus, both citizen suits and the opportunities for review noted in the cleanup standards section must be utilized in a manner consistent with the timing of review provisions.

The timing of review section is intended to be comprehensive. It covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. The section also covers all issues that could be construed as a challenge to the response, and limits those challenges to the opportunities specifically set forth in the section.

Thus, for example, while courts may be required to enforce an access order under section 104(e), there is no jurisdiction at that time to review any response action. In actions to compel access, the court may only review whether the Agency's conclusion that there is a release or threatened release of hazardous substances is arbitrary or capricious. The court may not review the response action to be performed. Similarly, there is no jurisdiction to review a response action through a citizen suit except as provided in the timing of review section. Citizens, including potentially responsible parties, cannot seek review of the response action or their potential liability for a response action—other than in an action for contribution—unless the suit falls within one of the categories provided in this section. The one opportunity for review that is not set forth in the timing of review provision is the express opportunity provided in section 121(f), (2) and (3), the cleanup standards provisions relating to remedial actions secured under section 106 and remedial actions at facilities owned or operated by a Federal agency. Under that section, a State may bring an action for the sole purpose of determining whether the finding of the President waiving a particular State standard is supported by substantial evidence. This opportunity does not exist for a fund-financed remedial action, since performance of the remedial action depends on the State's assurance of a share of the costs of cleanup; therefore, the State already has control over the application of State standards to fund financed remedial actions, and no additional process is needed.

The reference in the introductory language of the timing of review section to the general jurisdictional provision 28 U.S.C. 1332 is designed with the sole purpose of ensuring that actions in State court under State law can continue to be brought in Federal court if diversity jurisdiction exists. Actions within the scope of diversity jurisdiction may include, for example, a private nuisance suit against a person in another State who is not otherwise acting pursuant to an agreement with the Federal or State government. Thus, this reference to 28 U.S.C. 1332 does not create any additional rights or opportunities to obtain review of a Superfund response action.

Similarly, the reference to "Federal court" is simply to recognize existing section 113(b) of CERCLA, which provides that except for review of regulations, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under the circumstances provided in this section. Does the foregoing explanation adequately describe the intention of the conference committee in adopting this language?

Mr. SIMPSON. Yes, my friend, the gentleman from South Carolina has given me a very good explanation of one of the more complex provisions in this conference report. The explanation is certainly in conformity with the intention of the conferees on this bill. I recall that well.

Mr. THURMOND. I would also like to ask the chairman whether my interpretation of the phrase "taken or secured" in this same timing of review provision is the correct reading. It is my understanding that under the provision, no person may bring any lawsuit in Federal court regarding a federally approved removal or remedial action except when the removal action has been completed or when the remedial action has been taken or secured. "Taken or secured" means that all of the activities set forth in the record of decision which includes the challenged action have been completed. Moreover, there is to be no review of a removal action when there is to be a remedial action at the site. Thus, for example, review of the adequacy of a remedial investigation and feasibility study, which is a removal action, would not occur until the remedial action itself had been taken.

The section is designed to preclude lawsuits by any person concerning particular segments of the response action, as delineated by the records of decision, until those segments of the response have been constructed and given the chance to operate and demonstrate their effectiveness in meeting the requirements of the act. Completion of all of the work set out in a particular record of decision marks the first opportunity at which review of that portion of the response action can occur.

Mr. SIMPSON. The gentleman from South Carolina is quite correct. His interpretation of the meaning of the phrase "taken or secured" in context of the timing of review section is exactly the interpretation the conferees intended.

Mr. STAFFORD. Mr. President, we are going to have a rollcall vote, immediately following the rollcall vote concluding the handling of the continuing resolution, on the Superfund conference report. I hope that the Senate will unanimously adopt the conference report.

I heard what one of my colleagues said. I hope the President will sign this conference report when it comes to the White House. I think it is very important for the welfare of the American people that this program, designed to clean up hazardous waste sites, moves forward in this country, meeting the enormous task of cleaning up the hazardous waste sites that exist around the country.

Recently I visited one, and I can tell you that the people who are afflicted with the presence of one of these sites are truly desperate for help. We need to help them.

As the assistant majority leader said, the administration would greatly mistake the mood of this Senate and this Congress if it considered vetoing this bill. I think maybe even more important, it would greatly misconstrue the feelings of the American people who want this legislation, if the President is asked by some of his advisers to veto this bill.

So I very strongly hope that the bill will be signed by the President and become the law of this land. Again, I hope that when we reach the rollcall, we will unanimously, as Senators endorse this conference report.

Mr. BAUCUS. Mr. President, enactment of the Superfund Amendments and Reauthorization Act of 1986 will ensure that America's toxic chemical and hazardous waste cleanup program is finally on track. It has been a long struggle involving both this Congress and the previous Congress—a struggle actually predating the original enactment of Superfund. Today's action hopefully brings that struggle to a close in a way that will allow the American public to know that their Government is willing to protect the environment and, most importantly, force polluters to do the same. Our action today tells the American public that their Government will aggressively clean up and restore damages caused by our past hazardous waste disposal practices.

The 5-year $8.5 billion reauthorization, combined with the bill's other provisions, will ensure an adequate commitment of resources to get the job done.

A number of important provisions are added to Superfund: A realistic schedule to achieve cleanups is made part of the law; a new leaking underground storage tank cleanup program is enacted; citizen rights to judicial review are clarified; and settlement procedures are incorporated to deal with small contributors ranging from those who add but a single barrel to other de minimis parties such as a rural electric cooperative contributing one PCB-filled transformer. These and other provisions will strengthen current law.

Of special importance is section 121, which by establishing standards for clean ups will provide certainty to both public and responsible parties. Section 121 requires remedial actions that assure protection of human health and the environment, and which are cost effective. In determining whether remedial action is cost effective, the President is required to take into account both short- and long-term costs. Cost effectiveness is a consideration only after the President has determined the level of cleanup that assures protection of health and the environment.

In determining the minimum level of cleanup, section 121(d)(2)(B) authorizes the use of an alternate concentration limit [ACL] process, provided that, in a ground water situation, the assumed point of human exposure cannot extend beyond the facility boundary. In the case of ground water entering surface water, the conferees have made a limited exemption to such use of the ACL process. For this situation, in achieving a level of cleanup, there must be no point downstream where accumulation of hazardous consitutuents may occur which could lead to a statistically significant increase of such constitutents in the surface water, or organisms in such water, from such ground water. Although the use of ACL's may be appropriate in an extremely narrow set of circumstances, they must be narrowly circumscribed. The need for narrow interpretation and limited use is illustrated by the situation of Montana's Clark Fork River. The Silver Bow Creek site, along a headwater stream in the Clark Fork River drainage, has contributed to arsenic and other heavy metal pollution along at least 70 miles of stream. Contaminants are strewn the stream's length, possibly as far as Lake Pend Oreille in Idaho, as well as, concentrated in toxic hot spots in flood plains along an extensive stretch of the river. Although 121(d)(2)(B) expressly allows the use of ACL's, 121(b)(2)(ii) confines this use to an extremely limited set of extraordinary circumstances. Even the authorized use is confined to the purposes of this act, cleanups, and expressly prohibited for laws such as RCRA, which are intended to preclude any releases whatsoever. In addition to providing guidance on how clean is clean, the bill also clarifies the distinction between actions that constitute a restoration of natural resources and those that constitute remedial action.

There does not exist a hard-and-fast line between a remedial action and restoration of natural resources. Obviously, the more comprehensive a remedial action is, the less natural resource damage restoration is required. The difficulty of making this distinction is increased by the often subtle, difficult to detect nature of contamination by toxic chemicals.

Oil spills are visible. Hazardous substances and wastes often are not. But just as oil is to be completely removed under section 311 of the Clean Water Act, hazardous wastes are to be cleaned up under Superfund.

This bill, in section 111(c), created a new provision in 111(e)(2) under which the President is authorized to withhold payment of natural resource damage claims during any year that all of the Superfund moneys are needed for response actions. This provision does not in any way limit the viability or validity of these claims, either against the Fund or, under section 107, against responsible parties. Nor does it imply that congressional concern has lessened with respect to natural resource damages. Rather, the Congress has acknowledged that for the short term, the financial burden should be placed exclusively and immediately on the shoulders of responsible parties.

Trustees of natural resources continue to be responsible for the assessment of natural resource damages. Any determination of damages to natural resources made by either a Federal or State trustee in accordance with regulations promulgated under this act, has the benefit of a rebuttable presumption in any administrative or judicial proceeding. The trustees retain recovered funds for use without further appropriation and, specifically, may reimburse themselves for the costs of damage assessments.

The bill amends CERCLA to require that the President promulgate regulations for assessing damages to natural resources under section 301 not later than 6 months after enactment. Although a deadline for promulgation of these is already established by the [illegible]t *New Jersey* v. *Ruckelshaus*, civil [illegible]n No. 84-1668 (JWB) (DCNJ [illegible]), a later promulgation date was specifically set in SARA to allow additional time, if necessary, for reproposal of regulations required by section 301(c) in the event that the regulations submitted to the court are deemed inadequate. Because the Interior Department has ignored the intent of Congress and repeatedly erected barriers to the recovery of damages to natural resources, there is reason to believe this additional time may be necessary to the court. Certainly, the rules to date strongly discourage natural resource damage claims from ever being brought and would severely reduce recoverable damages in those few cases where they were sought.

These regulations also reduce the incentive on the part of industries to exercise care in order to avoid liability for natural resource damages. By thus failing to force these industries to internalize the true cost of their activities to society, the proposals issued to date are impediments to the restoration and replacement of resources, and incentives to careless, not careful, conduct.

Both CERCLA and the Clean Water Act establish natural resource replacement or restoration as the minimum measure of damage. The requirement in the DOI proposals that "the authorized official shall select the lesser of (1) restoration or replacement costs or (ii) diminution of use values as the measure of damages" is an unreasonable construction of both the Clean Water Act and Superfund, with no basis in law.

The cost of restoration, replacement, or acquisition of equivalent resources—if restoration is impossible, plus any demonstrated additional lost use value, or other damage beyond such cost, is the correct measure of damages. If the restoration or replacement of resources is technically impossible, the lost use values and other damages—such as damages measured using the contingent value method or the willingness to accept method, plus the cost or acquiring equivalent resources, is the correct measure of damages.

The DOI rule also states, again improperly, that potentially responsible parties [PRP's] "under the direction and guidance of the authorized official may implement all or any part of the assessment plan finally approved by the authorized official." This would circumvent the intent of Congress and violate the law. Trustee's not PRO's, should do the assessment. PRP's may carry out ministerial duties in accordance with the trustee-developed protocols, but discretionary decisions of any consequence are to be made only by the trustees.

Involvement of PRP's, and of local citizens, environmental organizations, State and local officials, and any other interested persons, is crucial to the success of any natural resource damage assessment procedure. Interested persons should be provided the opportunity to participate in the assessment process, to the same extent that PRP's enjoy such an opportunity. This requirement is a matter of fundamental fairness as well as good public and environmental policy.

It is the intent of CERCLA that natural resource damage claims regulations facilitate natural resource damage claims, not block them. Nonduplicative State common law, or statutory remedies, are not preempted by CERCLA, even if certain federally cognizable damages for injuries to natural resources have been recovered under CERCLA.

There are very few types of potential private losses associated with natural resource damage that appropriately would not be subject to trustee recovery. However, losses are not intended to be subject to trustee recovery if they are subject to private recovery. Trustees should be barred from recovery of private losses only if it can be demonstrated that recovery under established applicable tort doctrine is available to a private individual who has suffered a loss.

The heavy reliance of the current regulations on market value is unjustified. While many resources such as wetlands may have a market price, it is far below the value of the resource to society because of the public uses and services provided by the resource. A land appraisal, while easily done, is a wholly inappropriate measure of the value of most public use resources. It is inconceivable that any reasonable person would suggest measuring the Grand Canyon or Yellowstone Park on the basis of a land appraisal. Indeed, most such resources were selected for governmental protection because of their unique or unusual character. Thus, by definition, it is impossible to measure their value by comparing them to the value of nearby, but ordinary, resources.

Trustees must have the option to use those market and nonmarket methods of valuation that, in the trustees' judgment, most accurately evaluate injury to natural resources and compensate the public for its losses. The unduly narrow definition of injury under Interior Department rules threatens present legal interpretation and might erode even common law. Interior's inordinately stringent acceptance criteria and proof requirements have resulted in the decision that many injuries to fish, wildlife, and other natural resources will be excluded in assessments. Trustees should be free to recover such injuries if they can show that it is more likely than not that the injury has been caused by the discharge or release, even if Interior's general rules do not recognize those injuries. The problems with the Interior Department's regulations extend to both type A rules and type B rules. Any model developed should be based upon restoration or replacement costs, plus any lost use value and other demonstrable damages.

Interior's type A rules are "applicable only to the assessment of damages to coastal and marine environments" (51 Federal Register at 16,636). The model excludes all freshwater rivers, streams, and lakes, including the Great Lakes, as well as all inland wetlands and lakes. This limitation is clearly not the intent of Congress. The

majority of spills covered by CERCLA or section 311 of the Clean Water Act occur on areas not covered by type A rules or model. By Interior's own estimates, about two-thirds or even three-fourths of the liquid spills and 80 or 85 percent of solid releases occur in these exempted, nonmarine, nonestuarine areas. This limitation was clearly not intended by either CERCLA or section 311 of the Clean Water Act.

The proposed definition of "area affected" is unduly and unlawfully narrow. Requiring a minimum of 90 percent mortality of individuals, or at least 90 percent of the resident species, is an unreasonably high threshold. The law does not contemplate that natural resources in areas outside of this 90 percent/90 percent area are unworthy of detailed assessment. The rules and model improperly fail to consider subacute and chronic effects; for example, bioaccumulation and bioconcentration, impairment of reproductive success, neoplastic growths on fish, and certain other effects are intended to be included as injuries. It is not simply death that equals injury.

It is unreasonable to limit assessment to only one hazardous substance when multiple hazardous substances, or oil discharges, or releases, may be responsible for the injury. There should be no limitation on bird species so as to restrict assessment of injuries to only a limited number of birds.

The proposed rules appear to cover only sudden, accidental spills. This narrowing of the statute is unsupported by and directly contrary to the law. The law covers, and the rules should as well, all releases, nonsudden as well as sudden and nonaccidental as well as accidental. All minor releases or discharges also must be covered by these rules. The rules as drafted could exclude most or all NPL sites in the country, which is a comment on their inadequacy.

Any reasonably foreseeable damage done during a cleanup should be compensable under CERCLA. The rules should measure damages, based on replacement or restoration, or acquisition of equivalent resources—where restoration or replacement is technically impossible, plus any lost use value or other damages. The unjustifiable limitation on the rules and recovery would result in far less resource restoration, or replacement, than Congress had intended. I call these remarks to the attention of the distinguished floor manager and chairman of the Environment and Public Works Committee, Mr. STAFFORD. Does the floor manager concur with the remarks?

Mr. STAFFORD. The Senator raises a number of important points concerning the intention of Congress in addressing natural resource damages. I concur in those remarks, and agree with the statement he has just made.

Mr. BAUCUS. I thank the distinguished floor manager.

The amendments require the President to revise the national contingency plan, including the national hazardous substance response plan, within 18 months of enactment of these amendments. The President is to promulgate, by rule, amendments to the Hazard Ranking System [HRS] to ensure to the maximum extent feasible that the Hazard Ranking System accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review. A substantive standard for the Hazard Ranking System is established that, to the degree feasible, it accurately assesses the relative risk to human health and the environment. It is important to recognize that the Hazard Ranking System is not to be the equivalent of detailed risk assessment, quantitative or qualitative risk. These types of assessments are more appropriately included as part of remedial actions. Rather, the purpose of the provision is to require the Hazard Ranking System to rank sites as accurrately as the agency believes is feasible, using information from preliminary assessments and site inspections, such as ground or surface water, or air monitoring data, or the equivalent information and identification of potentially and actually contaminated water supplies for sensitive environments.

Considerable concern has been raised that the current Hazard Ranking System does not adequately consider the toxicity concentration of hazardous constituents which are present in any release or threatened release.

The Hazard Ranking System review was included in these amendments in recognition of the unique problems posed by high volume, low toxicity sites, such as mine waste sites. Considerable concern has been raised that the current Hazard Ranking System unfairly ranks these types of sites.

In *Eagle-Picher Industries* v. *EPA*,

759 F.2d 905 (D.C. Cir. 1985), the U.S. Court of Appeals for the District of Columbia Circuit Court, upheld the Hazard Ranking System as an appropriate mechanism for placing sites on the national priorities list [NPL]. The court recognized that the NPL has a limited purpose—screening sites that might, after further study, warrant fund-financed remedial action.

While this act directs the agency to review the Hazard Ranking System in order to enable it to assess more accurately the relative risks presented by the sites considered, this provision is not intended to reverse or undermine the decision in Eagle-Picher. The Congress recognizes the Hazard Ranking System must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. *Eagle-Picher*, supra, at 919-921.

To allow the Administrator to continue adding sites to the NPL while the HRS is reviewed, the act provides that the current HRS be applied until the effective date of the revised HRS.

During the interim period while the Hazard Ranking System is being reviewed, in determining whether to list mining waste sites, petroleum muds and brines, cement kiln waste sites or other special study waste sites—except fly ash sites, the President is to ensure that adequate consideration is given to onsite factors and to the specific nature of a site, prior to its inclusion on the national priorities list.

SUPERFUND PETROLEUM EXCLUSION

Mr. BENTSEN. I would like to ask a question with regard to the effects of this legislation. It is my understanding that these amendments would not diminish the scope of the present exclusion from liability for petroleum found in section 101(14) of the act. Is my understanding correct, Senator.

Mr. SIMPSON. Yes, the Senator from Texas is correct in his interpretation. This bill will not diminish the scope of the present petroleum exclusion. That provision, found in section 101(14) of the act, excludes from the definition of "hazardous substance" all types of petroleum, including crude oil, crude oil tank bottoms, refined fractions of crude oil, and tank bottoms of such which are not specifically listed or designated as a hazardous substance under the other subparagraph of that provision.

Mr. KENNEDY. Mr. President, today, the Senate has passed one of the most significant pieces of environmental legislation of our time—the Superfund Amendments and Reauthorization Act of 1986.

Citizens across our country who have despaired over the nightmare of toxic chemicals fouling their air and poisoning their drinking water can seek solace in the fact that, after months of discussion over this complicated legislation, Congress has agreed that further delay is intolerable.

The new superfund bill strengthens current law in its ability to clean up toxic waste sites and leaking underground storage tanks, and provides $9.0 billion to accomplish the task.

No piece of legislation is perfect and the Superfund bill is no exception. Indeed, I would have preferred to retain a number of provisions that were rejected by the conference members, including a Federal cause of action for victims of toxic waste and greater access for citizens to prevent an imminent and substantial endangerment to health or the environment. But I firmly believe that this Superfund bill is a legislative achievement worthy of its enactment.

We must look to the accomplishments of the bill. We have established a system of standards that will require that any cleanup at a site meet high levels of water and soil standards. We have also developed procedures to ensure that communities are aware of the extent of the contamination and potential threat to their health or environment. And we have provided $9 billion, a fivefold increase over the current level, to ensure that no site will fail to be cleaned up for lack of funds, when those parties responsible for the contamination are insolvent, unavailable, or refuse to meet their obligation to our society. No longer will our Government tolerate parties who balk by pursuing endless judicial remedies -the cleanup will continue while the Government imposes penalties on the irresponsible parties.

I am pleased that the bill includes an amendment that I sponsored to direct $15 million for pilot programs to remove lead contaminated soil in three metropolitan areas across our country. In the city of Boston alone, over 1,500 children have been stricken with the tragic effects of lead poisoning—and most of these children are from low-income families, who are ill-equipped to deal with the long-term medical costs associated with treating lead poisoning. This pilot program will provide

EPA with valuable information to serve as the benchmark for a future, more comprehensive response to deadly concentrations of lead in the environment.

I sponsored other provisions contained in the bill which the people of this country have been demanding for years:

Increasing the level of funding from $15 million to $275 million for health studies for victims of toxic waste; and

Procedures to avoid delays, such as those that occurred at the resolve site in North Dartmouth, to ensure that any potential threat to the health of citizens or the environment can be resolved expeditiously, without the administrative delays that have traditionally plagued the program.

With the new Superfund bill, our Government has the weapons to stop the atrocities that have existed in communities across our Nation. In my own State of Massachusetts, residents of communities who live with the danger of a toxic waste site have made repeated but fruitless calls to the Federal Government for assistance. During the past 6 years, since the enactment of the original Superfund law, not a single site in Massachusetts has been cleaned up, not a single threat to the public health has been entirely eliminated.

When I listened to the residents of these communities and visited the sites that they fear, I pledged that we would resolve this intolerable situation. Now, the Senate has responded by passing a strengthened Superfund bill.

I applaud the progress that has been accomplished and call upon the President for immediate approval of this legislation.

This investment in a clean environment and the health and safety of our citizens will reap innumerable rewards for present and future generations across our Nation.

Mr. WALLOP. Mr. President, I would like to express my concern for the direction in which the Superfund conference agreement takes us. I am pleased that the conferees were able to come to a well reasoned conclusion regarding a waste end tax. Not only is such a tax administratively cumbersome but it raises grave equity questions when applied to the real world. Such a tax would create a pollution tax which would be applied with the same rough justice approach of the Salem Witch Trials.

I cannot support the agreement wholeheartedly. First, the agreement substantially increases the tax on petroleum. The new tax of $2.75 billion is imposed at the worst possible time for this struggling industry—at a time that the industry is least able to pass the new tax along. Despite what many people argue when discussing an oil import fee, there is no "free market" in oil or any form of energy.

Second, the agreement does not reflect the societal nature of the problem. The cost of cleaning environmental problems should be based on the principle that the polluter should pay. The Environmental Protection Agency has identified more than 6,000 potentially responsible parties that have disposed of wastes at sites that are now abandoned—including virtually every U.S. manufacturing industry and many Government agencies, including the military. Petroleum companies make up only a very small percentage of that list. The broad-based tax introduced by Senator **Bentsen** and me recognized that Superfund is designed to clean up a societal problem. That is, it is to resolve problems that cannot be traced to any industry or group. These problems were brought about as a result of activities that benefited all in our society, no matter how ignorant we might now deem those activities. I support the goals of Superfund. And believe that they should be carried out in the most expedient and cost-efficient way possible. But I cannot support a funding mechanism that unfairly places a huge burden on one particular industry. This package appears to be based on the principle of deep pockets, that the oil companies can afford it. We cannot continue to consider energy or the companies that produce it as the benefactor of America. American energy producers do not have endless funds, nor are there endless sources of energy. I'm afraid that Americans, as represented by this Congress, appear to insist on learning both lessons the hard way.

Third, the conference report like the recent tax reform bill appears to be a major concession to the House's position. The funding level is much higher than that of the Senate bill. Many of the problems which are the focus of Superfund cannot be solved by throwing money at them. We are providing almost twice as much as the EPA believes they can intelligently spend over the next 5 years. In addition, the form of taxation primarily reflects the House position. The conference agreement uses a petroleum tax as the major funding source, rather than the broad-based tax of the Senate bill. The conference agreement is substantially closer to the House bill than to the Senate position.

I cannot support the method of funding, because it is inherently unfair and does not reflect real world considerations.

Mr. BOREN. Mr. President, all of us want to take necessary action to clean up hazardous waste sites in this country. I strongly favor the goals and objectives of this bill. Unfortunately the method of financing this Superfund Program is flawed. This tax proposal now before us for consideration is based on three premises, each of which is false. Therefore, unless improved, its enactment will prove needlessly destructive to U.S. energy security.

First, the tax proposal assumes that U.S. oil companies are lightly taxed in general. Second, the tax proposal assumes that U.S. oil companies are principal contributors to abandoned hazardous wastes. Third, the proposal assumes that the petroleum sector of our economy can afford to pay billions of dollars more in Superfund taxes without damage to oil and natural gas exploration and production. But, the facts tell a much different story on each one of these points.

First, the petroleum sector of the U.S. economy is not lightly taxed but heavily taxed. During the 1980's the U.S. oil industry has paid Federal taxes at a rate considerably higher than nonoil companies. A study by the staff of the Congressional Joint Committee on Taxation, covering the years 1980 through 1983, shows that the petroleum industry paid taxes at an effective corporate income tax rate 28-percent higher than the average of other industries. Furthermore, that study did not include the large special Federal excise tax on oil production—the so called "Windfall Profits Tax." When that tax is taken into consideration, the U.S. petroleum industry paid Federal taxes at a rate higher than that of all major industries covered by the study.

During 1985, 20 leading U.S. oil companies paid Federal income and windfall profit taxes at a rate of 36 percent of net income. That rate is 50 percent greater than that of 100 leading nonoil companies.

Furthermore, the tax reform bill passed by Congress and soon to be signed by the President, will add to the industry's heavier than average normal tax load. That tax bill will cost the petroleum industry a minimum of $10 billion in additional taxes over 5 years. The estimated total increase in corporate income taxes under the bill is $120 billion for that period. The petroleum industry's share of the total income of the national economy is 5 percent. Five percent of $120 billion is not $10 billion but $6 billion.

The Superfund tax proposal now before us would further imbalance the tax burden carried by the petroleum sector. It would require that oil companies pay one-third of the $8.5 billion package—as much as all other industries combined.

Imposing greater Superfund taxes on the industry could still be justified if, as the proposal presumes, these companies are major contributors to abandoned hazardous waste sites. Cleanup of these sites is the major purpose of the Superfund Program. But oil companies are not major contributors. The Environmental Protection Agency has identified more than 6,000 potentially responsible parties that have disposed of wastes at sites that are now abandoned—including virtually every U.S. manufacturing industry and many Government agencies, including the military. Petroleum companies make up a very small percentage of that list. Most petroleum industry waste is water that is treated and disposed of according to law and not disposed of in dumps that could become Superfund sites. Most other petroleum company wastes are either recycled or are incinerated, treated or otherwise disposed of on the facility's own property. If others dispose of petroleum products improperly, they should pay to clean them up.

A proponent of the Superfund tax proposal might still argue that, fairness aside, the petroleum industry is so rich and healthy that it can afford to pay a disproportionate share of the increase. But, the industry is not rich and healthy. The depressed conditions in the oil fields are well documented. The domestic drilling rig count is down from more than 4,000 in 1981 to 2,000 at the beginning of 1986 to some 700 today. Oil and natural gas well completions are running more than 40-percent below the 1981 level. Domestic consumption is rising. U.S. dependence on imported oil has climbed to 40 percent. In fact, the U.S. oil import level is now at its highest in 5 years. A greater percentage is now coming from OPEC nations than OPEC provided in 1973, the year of the Arab oil embargo.

I am pleased that Senator BENTSEN and others worked hard to establish a differential between domestic and foreign crude oil taxes in this bill. The Senator from Texas deserves credit for his fight to reduce the inequities in the bill. Given current market conditions however, I am afraid that domestic producers may still be faced with absorbing a large increase in tax burdens and that the differential will not have as much impact as it might have under other market conditions. Additional Superfund taxes, on top of the oil industry's already heavy tax burden, will—without a doubt—further reduce U.S. exploration and production, thus paving the way for still more rapid growth in our dependence on foreign oil.

We all agree that cleaning up abandoned hazardous wastes promptly is a vital objective. It should be done. It must be done. But, in reaching that objective Congress should enact a tax bill that is based squarely on the fact. The bill now being considered does not meet that test. Therefore, it should not be enacted in its current form.

Mr. BYRD. Mr. President, the conferees from the House and Senate, particularly Senators BENTSEN, STAFFORD, and LAUTENBERG, are to be commended for their efforts to reach an agreement on the reauthorization of the Nation's Superfund Program. They have worked long and hard to reach the agreement on the major programmatic differences between the two bills, and in the last few days, the conferees were able to agree on the appropriate mechanism for funding the $9 billion reauthorization.

Agreement on this major piece of environmental legislation is an important step toward the goal of cleaning up the Nation's abandoned toxic waste sites. It means that the Environmental Protection Agency can begin the identification of new toxic waste sites, and renew its efforts to clean up sites already on the national priority list.

It provides for a funding level of $9 billion through a combination of a broad-based fee, petroleum and feedstock taxes, general revenues, and miscellaneous receipts. The sources of hazardous wastes are diverse. Therefore, such a funding mechansim, as that adopted by the conferees, is a fair and equitable way to fund the cleanup of our abandoned hazardous waste sites.

Basic West Virginia industries such as chemicals, steel, and oil and gas, are facing ever-increasing competition from foreign imports. This mechanism not only equitably distributes the cost burden, but it is also not detrimental to our trade situation. By maintaining the current level of feedstock fees paid by the petrochemical industry, the conference report recognizes the importance of maintaining that industry's ability to compete in the domestic and international marketplace.

Again, I applaud the efforts of all the conferees and I urge the adoption of this conference agreement.

Mr. CRANSTON. Mr. President, I'm pleased to support the conference report on the Superfund reauthorization bill. This is a measure of tremendous significance to California and the rest of the Nation and essential in moving forward with the critical task of cleaning up dangerous toxic sites.

The conference report includes important new provisions on cleanup standards, cleanup schedules, leaking underground storage tanks, citizens suits, and community right-to-know programs critical to alerting citizens of hazardous waste and emergency response planning. These programmatic changes should bring about significant improvements in the program and help accomplish our task of cleaning up hazardous waste.

The conference report also provides money essential to do the job—$8.5 billion—and an equitable sharing of the burden of financing the program.

We are going to need much much more in the future, but this legislation is vital in adressing the hazardous waste problem.

We cannot let this program so critical to the Nation's health and safety lapse.

I hope the Senate will unanimously approve this legislation and that the President will sign the bill.

Mr. ROTH. Mr. President, I am extremely pleased to be able to vote on this Superfund conference report today. We are considering legislation that was agreed to by the conferees on the programmatic portion of the Superfund conference after many months of tough and enormously complex negotiations. These negotiations were led by my distinguished colleague and very good friend from Vermont, Senator STAFFORD. It was because of his outstanding leadership on many of the controversial issues that the Superfund conferees were able to complete the important programmatic component of this extremely important piece of legislation.

In addition, Mr. President, I am extremely proud to have been a Senate conferee involved in the intricate final negotiations on the funding of Superfund. Under the able guidance of my good friends and distinguished colleagues from Oregon, Mr. PACKWOOD; from Kansas, Mr. DOLE; from Louisiana, Mr. LONG; and from Texas, Mr. BENTSEN; we were able to find a stable long-term funding solution to clean up our hazardous waste sites.

During our long and arduous negotiations we were able to achieve funding for a Superfund Program that is based on an equitable sharing of the funding burden. It is based on a broad-based tax, a petroleum tax, and a chemical feedstock tax. No waste end tax was included.

The bill authorizes $8.5 billion in Superfund spending during the next 5 years. This represents a fivefold increase from the $1.6 billion authorized for the program's initial 5 years. In addition, the bill authorizes another $500 million for the new underground petroleum tank cleanup program.

I have always been a strong supporter of this program, and I hope that we have arrived at a point in time that enables us to continue with our toxic waste cleanup program. I urge my fellow colleagues to support it and urge the President to sign it as soon as it reaches his desk.

Mr. RIEGLE. Mr. President, I am very pleased that Congress will pass the Superfund Program this year. This is a critical program for many people in my State, as it is for people across the Nation. It is essential that it be reauthorized so that we can get on with the important job of cleaning up toxic waste sites. I hope in doing so, we convey to President Reagan a strong message of support for this program.

The importance of this program cannot be overstated. Since the program was enacted in 1980, we have discovered many more abandoned and leaking hazardous waste sites in this country than had originally been predicted.

The Environmental Protection Agency now tells us that there are 17,000 possible abandoned sites across the country and that as many as 2,500 may require remedial action. In my State of Michigan alone over 1,000 dumpsites with the potential to contaminate ground water have been discovered. We have 66 sites on the national priority list for cleanup action.

There is no question that the cost of cleaning up these sites is very high. Long-term remedial action where no ground water contamination has occurred averages $4 to $6 million per site to complete the studies and remove contaminated soils. Where ground water is contaminated, cleanup costs can run $17 million or more. The Michigan Department of Natural Resources estimates that it would cost at least $2.9 billion to clean up 600 of the sites in my State alone.

The problem is huge, the cost is great, and progress to date in cleaning up sites has been slow. There are currently 888 proposed and final sites on the national priority list [NPL] for cleanup activity. While the EPA says that remedial investigations and feasibility studies are under way or have been completed at half of these sites, cleanup work is completed at only 11 NPL sites. We clearly have a long way to go to remove this threat to our national health.

Because the scope of the problem is so large, the measures that we have been considering to deal with it are equally large and, consequently, controversial. I would rather support another financing package if one were available. But in order to take care of the hazardous waste problem, we need to make an economic commitment.

I would urge the President to sign this bill into law. I believe hazardous waste cleanup activities need to be a top priority in this country. We need a strong Superfund package so that the people of this country will not have to live in fear. We have heard them ask for help. We should do everything we can to make sure that dangerous hazardous wastes are cleaned up as quickly, efficiently, and effectively as possible.

Mr. HEINZ. Mr. President, I commend the Senate conferees on the Superfund reauthorization, particularly my colleagues on the Senate Finance Committee, for their successful efforts. The conference report before the Senate will expedite cleanup at the 65 Pennsylvania sites now on the Superfund national priorities list, provide protection to our citizens and our communities, and raise revenues for Superfund in a responsible fashion.

Mr. President, it has been a long and hard road to reauthorization. Those who would hold Superfund hostage to unworkable taxing proposals have delayed reauthorization for nearly a year. A lot of time has been lost in the resulting slowdown, and I believe that when this agreement is approved—and I hope it will be approved—EPA will have to keep up the most ambitious cleanup schedule possible.

Remedial action must be commenced at no less than 375 Superfund in the next 5 years. The national priorities list contains 703 sites at this time, and that figure could more than double in the next few years. We have our work cut out for us. As good a package as this one is, still more will have to be done in the coming years.

I am particularly pleased that the conference report takes steps toward addressing the problem which leaking underground storage tanks pose to ground water. In addition, the right-to-know provisions would require certain manufacturers to report to emergency and environmental officials information on chemical inventories and harmful emissions to the environment. Reform of the State's statutes of limitations for harms inflicted by toxic waste is also a positive step. I applaud the conferees for their work to enhance the safeguards against toxic waste.

I join my colleagues in calling for the approval of the conference report, and express my strong desire to see the President enact it into law.

Mr. DURENBERGER. Mr. President, too much has been said about this bill already. And another blizzard of words on Superfund will drift across the pages of the RECORD today. Knowing that whatever I say will be disputed, refuted, confounded and undone by at least a dozen, if not a score or more, of other statements, equally telling, will keep my comments brief.

Mr. President, Superfund reauthorization has been a travail. It has been a struggle. It has gone on too long. It has been too difficult. We all want Superfund. We have all given it our full support all the way through the process. But we are most thankful that the process will conclude with the adoption of the conference report today.

When the bill was before the Senate about 1 year ago, I came to the floor to express concern about the future of the Superfund Program. I have been an active participant in the conference over the last year. Much of what I, and the other members of the Committee on Environment and Public Works, worked so hard to achieve is contained in the conference report now before the Senate. There is much in this bill that I like. Nevertheless, today, even as we send a 5-year reauthorization to the President, I remain troubled about the future of the Superfund Program.

Let me express that concern this way. When it was adopted in 1980, Superfund was designed to assure that those who are responsible for the release of hazardous substances into the environment would also bear the responsibility of responding to the threats that those substances pose. That was the theory of Superfund.

The theory was incorporated into the law in two ways. First, the program imposed strict, joint, and several liability on those who manufacture, handle, and dispose of hazardous substances. Second, a tax was imposed on petrochemical feedstocks to finance a response trust fund that could be used to pay for cleanup where no responsible party could be found. That is the structure of the 1980 law, Mr. President.

As we began the reauthorization process in 1984, Superfund was under attack on both fronts. Members of the Congress from States where the petrochemical industry is an important part of the economy objected to the tax. They proposed the so-called broad-based tax as an alternative.

And on the liability side of the equation, the insurance industry, which was experiencing a downturn in profits as a result of falling interest rates, and other elements in the manufacturing sector of our economy urged that strict, joint, and several liability be diluted in a variety of ways.

All through the reauthorization process we have watched these twin attacks on the Superfund Program play out. I would like to think that I have been throughout this process firmly and steadfastly in the camp that was determined to defend the two fundamental elements of the 1980 statute. And as we wrap up the conference report today my view is that we have achieved at least a draw.

There is a broad-based tax. It is not as big as originally proposed. The feedstock and petrochemical taxes are continued. The program has been greatly expanded. New elements have been added. It was necessary to find additional revenue. And the burden for this program has been shifted away from the elements in our economy which generate hazardous substances and spread more uniformly across all sectors. So we have yielded to the broad-based tax.

But on the question of liability we have held firm. The rule is still strict, joint, and several liability. The liability scheme in Superfund is dented here and there by this conference report. But the fundamental principle is still intact. That is a major victory accomplished by the Senator from Vermont, the distinguished chairman of the Committee on Environment and Public Works. Senator STAFFORD's steadfast adherence to this principle has been the one thing that everyone could count on from the very day this reauthorization process was begun.

Mr. President, we will over the next few days hear many in the administration suggest that this bill should be vetoed because it departs from the polluter pays theory adopted in 1980. They oppose the broad-based tax. But as my comments are intended to make clear, we have not experienced a complete defeat on the polluter pays question. We have preserved the full liability of the responsible party. And if the administration is sincere about polluter pay, they have a ready instrument to put the theory into practice. The President can enforce the Superfund law. The President can recover the costs of response from those who cause damage to the environment or threaten the health of our citizens. The President can recover every dollar of the broad-based tax imposed by this act by pursuing the polluters in cost recovery cases.

Whether we have preserved the polluter pays theory of the 1980 law, is a question yet to be answered. It will depend in great part on the way the program is implemented over the coming years. If EPA uses the full reach of the liability principle contained in this statute, the polluter will pay. If not, Superfund is destined, as I said here on the floor of the Senate about a year ago, to become just another public works program.

Mr. NICKLES. Mr. President, I rise today to express a sincere disappointment in the Superfund conference report.

In reauthorizing Superfund we are continuing a commitment to cleanup our environment, to remove the hazards that threaten our drinking water, our property, and our communities. I support that effort wholeheartedly. Unfortunately, we are trying to achieve that end by placing an inordinate tax burden on one industry, the petroleum industry.

The funding mechanism designed to fund this program increases taxes on crude oil by a factor of five. The net effect of this provision is to require that the oil industry pay over 50 percent of the entire program.

Now, some people say that we should tax the groups that are the most responsible for the waste that Superfund is designed to clean up, and as a matter of policy I agree with this. Unfortunately, people have been hoodwinked into believing that the major cause of hazardous waste at our Superfund sites is the petroleum industry. The facts tell a much different story:

EPA has compiled a list of "potentially responsible parties" [PRP] at Superfund sites. This list includes companies from all over the country in almost every aspect of manufacturing. If we were to actually follow the policy that the "polluter pays," then the petroleum industry would really have to pay less than 20 percent of the total taxes for this program, as determined by the number of sites in which they have been directly identified as a polluter.

The conference report that we have before us presumes guilt on the part of the petroleum industry merely for producing and refining crude oil. What it says is that since the oil industry is the original source for many of the pollutants that we find in Superfund sites, they must be responsible for paying for the program—no matter the company which actually disposed of the waste, no matter the extent to which the polluter contributed to the overall societal problem which we face today.

We are facing a question of equity. This is not a "polluter pays" financing mechanism. We are forcing an industry that is already suffering immensely to shoulder a societal burden for which it is only partially responsible. What we are doing is kicking an industry while it is down on its back.

To give you an idea of the effect of

these provisions, let me cite a few numbers. We are increasing the tax burden on the petroleum industry by over $3 billion. One company in my State, Conoco, will face a tax increase of around $11 million a year under this program. Phillips Petroleum will face an increase of about $20 million a year. These taxes, furthermore, have no relation to the profitability of the company. Right now most oil companies are cutting back; people are being laid off, budgets are being slashed, and the unemployed rolls in my State as well as others are swelling at frightening rates.

Mr. President, the hazardous waste dumps that dot the countryside present a dire problem to our whole society. In seeking solutions to that problem, we must include our whole society. We all must be responsible for ridding our landscape of this blight, and we should not be content to lay the burden on only one industry when the fault rests in all of us.

Mr. CHILES. Mr. President, the amendments to section 105 call for revision of the hazard ranking system and would apply the revision prospectively to new candidates for the national priorities list. This bill makes it clear that the Environmental Protection Agency is not obliged either to apply the revised hazard ranking system to sites already listed on the national priorities list or to rescore the sites.

I believe, however, that this should not preclude the Environmental Protection Agency from taking a second look at a currently listed site, where an error might have been made in the original scoring because of questions about whether or not two wells were in operation.

I am specifically referring to the Munisport site in the State of Florida. The city of North Miami acquired this site from the State in 1970 for a recreational complex. Before the complex could be built, fill was required. So, between 1976 and 1980, a municipal landfill was operated on designated portions of the site under county, State, and Corps of Engineer permits.

In 1983, the site was placed on the national priorities list where it occupies the 466th spot. The site scored 32.37; any score above 28.5 qualified a site for listing. One of the main reasons for this high score was the fact that the scorer recorded two well fields servicing the cities of North Miami Beach and North Miami within 3 miles of the site. However, the city of North Miami has stated that both well fields had permanently ceased operation because of saltwater intrusion, one 3 years before, the other 2 months before the site was proposed for listing in 1982.

Florida's environmental agency recalculated the score as 10.57, a full 18 points below the qualifying score for the national priorities list. EPA acknowledged in its 1984 remedial action master plan for the site that both well fields were closed. Both the State and the city have asked EPA to rescore the site, and remove it from the national priorities list.

I am a very strong supporter of the Superfund Program, but I believe that the EPA needs to take a closer look at why this site was put on the national priorities list. It's my understanding that the city of North Miami and the State of Florida are already conducting a $205,700 study in preparation for capping and closing the site in accordance with State law. I believe that the EPA needs to work with the city and review this data instead of requiring a more costly remedial investigation before the Agency will consider delisting.

Is it the position of the conference committee that a currently listed site can be rescored if the EPA concludes that there was a verifiable factual error? If the new score justifies it, can the site be removed from the national priorities list without a costly and time-consuming remedial investigation or cleanup effort?

Mr. STAFFORD. Without agreeing or disagreeing with any of the factual representations made by the Senator, the Environmental Protection Agency has the statutory authority to rescore a facility prior to a remedial investigation and feasibility study where the Administrator determines, in his discretion, that a significant factual error was made in the scoring of a facility and such error would cause the facility to be removed from the national priorities list.

Mr. WILSON. Mr. President, I rise with great pleasure to endorse the conference report agreement on the reauthorization of the Superfund Program. I applaud the fine work of the conferees in bringing this report to the floor. In my opinion, this conference report agreement represents the most significant work on important environmental legislation in this the

99th Congress, and I'm elated that work on this bill has finally been completed even at this late date.

Most of my colleagues are aware that California has much at stake in this bill. My home State lays claims to the unenviable distinction of containing some of the worst contaminated sites in the Nation. Without this program, cleanup at sites throughout California will languish or stop altogether, and the health hazards that they pose to the ground water sources that service literally millions of people will continue to multiply. Fortunately, with this conference agreement, we can be assured that critically needed cleanup will continue.

I am especially appreciative of the willingness of the committee members to include language at my request in this new Superfund Program that specifically addresses toxic waste problems at military installations. Having conducted hearings on this problem at four installations in California last summer, I have become well aware of the need to make a special provision in the law to address this serious matter. With this bill enacted into law, we will finally have a special program established at the Department of Defense that is exclusively dedicated to the proposition of environmental restoration.

My heartfelt congratulations to the Environment Committee for successfully completing action on this conference report, and I urge its adoption.

Mr. KERRY. Mr. President, today is a proud—albeit an overdue—day for the Senate. For today, we are set to reauthorize what is perhaps the most important environmental program that Congress has legislated in the last decade. I want to commend the bill's conferees for the dedication, diligence and creativity they have shown in pursuit of this reauthorization. They understood the challenge that faced them. They persisted over many months. Through periods in which it appeared that the Superfund Program would be allowed to whither away the conferees determined that they would not let that happen. The result here today is a strong and responsible reauthorization of this vital program.

A recent event in Massachusetts is evoked today as we prepare to vote. It was only several weeks ago that several residents of the town of Woburn finally settled a case that had been pending for many years. In it they had alleged that a private company had been responsible for the leukemia that was highly prevelant in their area. They were on the verge of proving the causal link when the company settled out of court. I know that the events in Woburn had a great deal to do with my State's awareness of the problem of our toxic waste legacies. And I know that the Woburns and the Love Canals moved this issue to the top of the national agenda.

The 1981 debut of Superfund could have been better. The short shrift the administration gave it accentuated the flaws in the enacting legislation and the low level of funding did at times hamper our efforts to tackle cleanup problems. But we learned a great deal from those years of experience and I think that it allowed Congress to develop a reauthorization that will work more efficiently in the future.

I would have preferred more time to study the funding mechanism that the conferees have used. Completion of the conference report, only last night, makes careful study impossible. I know how difficult it is to determine who should shoulder the burden when it comes to funding Superfund. While I know that not everybody will be happy with this new tax arrangement, it is my impression that this formula represents shared responsibility.

Let us hope that we can look forward to the end of the uncertainty that has plagued the Superfund for the last few months and that we may soon be able to make toxic waste problems history. Again, let me commend my colleagues on their fruitful efforts.

Mrs. HAWKINS. Mr. President, I rise in strong support of the conference report on the Superfund reauthorization legislation. It is absolutely vital that we pass this bill in order to continue and accelerate the progress we have made thus far in cleaning up the thousands of toxic waste sites which poison our land, our air, and our water.

The State of Florida ranks sixth in the Nation with 35 sites on the National Priority List. Florida is built upon a network of aquifers—these toxic sites sit directly upon Florida's groundwater supply. Florida is one of the few States in the Nation which depends almost exclusively upon its ground water to provide its drinking water. Florida's aquifers lie perilously close to the surface, with a minimal layer of intervening rock or soil to filter out dangerous contaminants. Hundreds of wells have had to close in recent years due to toxic contamination.

Yet, EPA informs me that absent a Superfund reauthorization package in this Congress, the Agency will be forced to halt all work on all sites in Florida. Already, EPA has stopped work on four Superfund sites in the State.

The uncertainty which has plagued the program over the past year has slowed the cleanup effort to a dangerous pace. The longer we delay in providing the program adequate funds, the more we threaten the programs' future viability. We must pass this legislation now, if we do not we are placing public health at serious risk.

The package before us today contains many provisions which will provide better protection to the public. It sets up a framework which would: Ban disposal of hazardous waste at leaking landfills, encourage permanent waste treatment where it is feasible, repair the hundreds of thousands of leaking underground storage tanks, require review of cleaned sites every 5 years, and require chemical manufacturers to inform local authorities and the public of dangerous substances routinely released into the environment and the potential health effects of such emissions.

Mr. President, there are an estimated 22,000 hazardous waste sites across the Nation which need cleanup. This estimate may represent only the tip of the iceberg. The longer these sites remain untended, the greater the threat they will seep into our water supplies, contaminate land and threaten the health of millions of Americans. I urge the adoption of the Superfund conference report.

Mr. D'AMATO. Mr. President, I rise today in support of the Superfund conference report. As one who has contacted the conferees on several occasions to urge prompt action on this bill, I am glad to see that we have broken through the long delays and have reached the point where it looks like the full Senate will pass a strong, $8.5 billion 5-year reauthorization.

This long-awaited day is tempered, however, by threats of a Presidential veto. This would be devastating to New York, which has the third highest number of Superfund sites in the Nation, with 57 sites on the national priorities list, and another 8 which have been proposed for inclusion on the list.

The voters of New York soon will consider proposition 1, the Environmental Quality Bond Act of 1986. This is an act which demonstrates New York State's commitment to cleaning up these toxic wastes, but it is all part of an overall effort which depends on Federal Superfund money.

Mr. President, I think it is unfortunate that the clock is ticking, in light of the threat of a pocket veto. We could all stand here and bemoan the fact that this conference report has reached us at such a late hour. However, I think at this point the main priority is for each of us to urge President Reagan to sign this legislation and to let the cleanups continue. I am here today to do just that.

This conference report will provide a strong, $8.5 billion Superfund Program. This is a more than fivefold increase over the former program. Cleanups would have to meet standards and requirements of Federal and State environmental laws. This bill will bar disposal of Superfund waste at leaking landfills, will require permanent waste treatment when practicable, and will require review of cleaned sites every 5 years. EPA will be required to ensure that long-term cleanup work begins at no fewer than 375 Superfund sites over the next 5 years.

As the sponsor of S. 606, the Community Right-To-Know Act of 1985, I am especially pleased that this conference report contains right-to-know provisions which will require certain manufacturers to report to emergency and environmental officials information on chemical inventories and emissions to the environment. Under this bill, States will establish emergency planning districts for chemical leaks from facilities.

A research and demonstration program will be authorized to encourage development and use of new hazardous waste treatment technologies that could be used for permanent cleanup of Superfund sites.

Mr. President, I could go on detailing this conference report, but I think the bottom line is this: We simply cannot have any more delays. The health and safety of our citizenry is at stake. I urge prompt passage of this conference report, and I urge President Reagan to sign the bill so that these cleanups may begin.

Mr. KASTEN. Mr. President, I rise to express my support of the Superfund conference package offered today. Reauthorization and funding of the Superfund hazardous waste cleanup program is essential to the health of our citizens and to the preservation of our environment.

Although this package is not perfect, the conferees reached a compromise after difficult negotiations. The new legislation provides for $8.5 billion in Superfund spending during the next 5 years. Of that amount. $2.75 billion would come from taxes on petroleum; $1.4 billion from feedstock chemical taxes, $2.5 billion from broad-based tax on corporate income, $1.25 billion from general revenues, and $600 billion from interest on money from the fund itself. The funding mechanisms in the conference report are an improvement over the Senate adopted value-added tax. However, I am critical of some of the tax provisions, particularly the broad-based tax. Nevertheless, I feel it is crucial that we all compromise and adopt this bipartisan effort to reauthorize and fund this vital program.

I believe that a strengthened Superfund is essential to protecting the health and safety of all Americans. We simply cannot tolerate further delay in strengthening this essential program to protect health and safety.

Mr. BENTSEN. Mr. President, let me conclude by saying how much I appreciate the leadership of the distinguished chairman of our committee. It is truly a bipartisan committee and we work together across party lines on what is best for our country. I want to congratulate the distinguished Senator LAUTENBERG, from New Jersey, who brought with him his experience and understanding of this issue. I must say that Senator SIMPSON, with his good humor and judgment, made a major contribution. I would also say that JOHN DINGELL, chairman on the House side, as Senator SIMPSON stated, had a firm hand and did a dedicated job. Without his help, I question there would be resolution on the House side.

Mr. President, what we have done here, I think, is a very major piece of legislation that will do much to protect the health of America and improve the environment. We have offered what we believe are some permanent solutions to the problem. I would strongly urge the President of the United States to recognize what has been done here to satisfy the concerns of the people of this country and sign this legislation.

Mr. STAFFORD. Mr. President, if there is any time remaining, I did want to express my gratitude to Senator BENTSEN for the splendid way in which he has helped to get this legislation before the Senate. It is always easy to be bipartisan when you have people as pleasant and cooperative to work with as Senator BENTSEN has always been.

One group that made it possible for us to achieve this conference report has not been mentioned. I want to express my personal appreciation and that of the committee to the staff of the Environment and Public Works Committee for all the difficult and long hours that they put in to make it possible for us to achieve agreement in the conference report I yield back the remainder of my time.

Mr. DOLE. Mr. President, I am pleased that we are finally ready to act on a comprehensive Superfund bill. This conference agreement really has been 2 years in the making, and ideally it should have been reached a long time ago. The conferees on both the program side and the funding side have put a lot of hard work into this agreement, and the result is a bill that should keep the Superfund operating at full capacity over the next 5 years.

The problem of abandoned hazardous wastes remains an urgent one, and it is something we have an obligation to deal with. In truth, no one has seriously disputed the magnitude of the hazardous waste problem, or the need for a strong Federal role in responding to that problem. The controversy that has delayed the reauthorization of Superfund has instead revolved around the nature of the Federal role, and on the best way to allocate the burden of funding a Federal response.

Mr. President, those have never been easy questions. I know that the distinguished chairman and ranking member of the Environment Committee, Senators STAFFORD and LAUTENBERG, had to make some tough decisions in negotiating with the House over the best way to use the Superfund. Similarly, the conferees on the tax title—of which I was one—had to swallow hard to reach agreement with the House. But we did reach agreement, and it seems to this Senator that we ought to wrap it up, given all the work that has gone into crafting this package.

CONCERNS ABOUT FUNDING

Mr. President, I agreed to sign the Superfund tax conference agreement because it is important we show solidarity in supporting this very delicate compromise. Nevertheless, I do have serious reservations about this funding package—many of which are shared by the President of the United States.

As in any successful compromise, we have made sure that everyone gives a little. Over the next 5 years chemical producers will continue to pay $1.4 billion in feedstock taxes, which is essentially what the original 1980 program called for. In addition, the general revenue contribution is raised to $1.25 billion—a significant increase, but only slightly higher as a percentage of the entire, $8.5 billion fund.

Other features are more controversial. We have raised the oil taxes in Superfund by more than a factor of 10: From $200 million to $2.75 billion over 5 years. That is a big hit on an industry that has serious problems in today's energy market. It is also far out of proportion to any reasonable estimate of the contribution oil makes to the hazardous waste problem.

Mr. President, we have no waste-end tax in this bill. No one likes the waste-end tax, because it can be complex and because it hits a lot of people who already are paying Superfund tax. But at least a waste tax is related to the problem at hand; the generation of wastes that are hazardous to the health and safety of our citizens. A waste-generation tax is preferred by President Reagan, and it is the approach I preferred in 1984 when I chaired the Finance Committee. I would still prefer it, despite all its drawbacks, rather than hit oil as hard as we do in this bill.

Finally, we have agreed to a new formulation of a broad-based tax. This time, we piggyback on the new corporate minimum tax included in the tax reform bill, and raise $2.5 billion over the next 5 years. This is not nearly as bad as the excise tax, really a vat, which we agreed to in the Senate bill. A corporate minimum tax doesn't create a whole new, hidden tax base, and it is more likely to be kept under control in the years ahead. But it has nothing to do with the idea of making polluters pay, and I continue to oppose it as a matter of principle.

Nevertheless, Mr. President, I have agreed to this funding scheme. I think it is a bad scheme, but it appears to be the best we can do for the foreseeable future. We do need to show our commitment to cleaning up hazardous wastes, and to providing the resources the Superfund needs to address the problem.

President Reagan prefers a $5.3 billion bill, with no broad-based tax. That is my view as well, and last year I opposed the Senate bill because it was too big and because it contained a vat. At this late date I think we need to get this bill behind us, and see what the President will do.

I certainly commend all parties. I have signed the conference report. I am a little concerned about the funding. We are making a big hit on a crippled industry, the oil industry. Also, other features are controversial. My own view is that we should have had a waste-end tax. We have agreed to a new formulation of a broad-based tax. This time we piggybacked the new corporate minimum tax in the tax reform bill and will raise about $2.5 billion in the next 5 years. It is not as bad as the excise tax which we agreed to in the Senate bill but I do suggest that it is controversial and may have some trouble at the White House. I hope the President and his advisers will study the bill carefully. I hope it will be signed, not vetoed.

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, is there any chance we could vote on this conference report immediately?

Mr. DOLE. We are prepared to go forward on the continuing resolution. We have reached an agreement on the Philippines amendment. It will be a bipartisan leadership amendment. There will be virtually no debate. There will be an immediate rollcall. Senator MELCHER has been taken care of in the language which will not require a rollcall. There will be a rollcall vote on final passage.

The PRESIDING OFFICER. The vote on this conference report will occur after the rollcall vote on the continuing resolution.

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p. S14942

AGENDA

Mr. DOLE. Mr. President, first let me indicate that we are waiting for the amendment by Senator MELCHER to be modified if that can be done and that can be accepted. They are meeting now with the USDA officials right off the floor. It is my hope that will be finished momentarily and then there will be one final amendment on drug funding and then final passage, and then passage of the Superfund conference report.

But we would do in the wrapup the Export-Import Bank conference report, technology transfer, and the handicapped bill in wrapup.

On Monday, we will do S. 2702, come in about noon, FIFRA, there is one vote expected, S. 2045, CFTC, hopefully by unanimous consent, but if not there could be a vote on that.

We will dispose of Superfund. There will be additional conference reports on intelligence authorization and bankruptcy plus the Executive Calendar and any other matters that might come to us, conference reports.

On Tuesday morning at 9 o'clock we hope to begin the impeachment trial of Judge Claiborne. We hope to be at that for 4 hours on Tuesday, and then Tuesday afternoon we will do other Senate business, and then hopefully conclude the action on the Claiborne matter on Wednesday of next week. That should not take the entire day. Then hopefully the remainder of the day on Wednesday we would be waiting the CR conference report, the debt limit conference report, reconciliation, the highway bill conference report and maybe other conference reports and hopefully conclude our business no later than Thursday of next week.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

I believe it is very important that we all as Senators understand the importance of good attendance on the floor during the trial of the impeachment of Judge Claiborne.

I know there are some Senators who may be under the impressions that it will not be necessary for them to be in attendance.

I think at the very least we have to maintain a quorum on the floor at all times during the trial. We should be certain that the proceedings are not delayed or interrupted by quorum calls, thereby both detracting from the serious nature of the trial and delaying our sine die adjourment.

I will continue to emphasize this to my colleagues on this side of the aisle, and I urge all of our colleagues while we have good attendance here on the floor to attend this trial and be present on the floor.

It is a serious procedure. It is our constitutional responsibility as we all know, and for the reasons I have already stated I think it is imperative that we maintain a quorum here on this floor at all times during that trial.

Mr. BUMPERS. Mr. President, will the majority leader yield?

Mr. DOLE. First, let me indicate I certainly share the views just expressed by the distinguished minority leader. This is a serious matter. I am certain every Senator understands that and believes that and will demonstrate that over the next week.

So I would hope that when we begin our deliberations on Tuesday morning we will have a solid number of Senators here, well over a quorum, if possible.

Let me yield very quickly to the Senator from Arkansas.

☐ 1720

Mr. BUMPERS. How many more rollcalls do you anticipate this evening?

Mr. DOLE. I anticipate, hopefully, only one on final passage and then one on the Superfund conference report.

Mr. ARMSTRONG. Will the Senator yield?

Mr. DOLE. I am happy to yield.

Mr. ARMSTRONG. I think I heard the leader refer to the Exim conference report. If that were to be called up tonight, it might lead to a rollcall. I am wondering if there is an urgency about it that it could not go over until Monday.

Mr. DOLE. I was advised by the Senator from Pennsylvania, Senator HEINZ, just a few minutes ago in my office that their authorization expires at midnight tonight. Otherwise, I had planned on bringing it up on Monday.

Mr. ARMSTRONG. Mr. President, I would urge the leader to do that. I have not had a chance to review it. It is not my desire to get an extra rollcall today, but there are matters that may be in that conference report that we have not had a chance to look at.

Mr. DOLE. Perhaps in the next few minutes we could discuss that with the Senator from Pennsylvania.

Mr. BYRD. Mr. President, would the distinguished majority leader consider going ahead with the vote on Superfund? There are some Senators who have plans to catch planes. Could we make that vote before they have to leave to catch a plane?

Mr. DOLE. If that is satisfactory

with the manager of the bill. I need to check with Senator HATFIELD. I know they are still drafting on the Melcher amendment.

Mr. METZENBAUM. It is coming right in.

Mr. BYRD. That would save some time.

Mr. DOLE. Senator MELCHER is now here.

Mr. BYRD. You can go ahead with the Superfund and go ahead with the Superfund vote now.

Mr. DOLE. I understand that the manager has no problem as long as we understand that the Melcher amendment will be available immediately after the vote.

Mt. MELCHER. Immediately; and it is agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that, notwithstanding the previous order, we now vote on the Superfund conference report. The yeas and nays have been ordered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Fifteen minutes, flat.

VOTE—CONFERENCE REPORT ON H.R. 2005

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 88, nays 8, as follows:

[Rollcall Vote No. 329 Leg.]

YEAS—88

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Bingaman
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gore
Gorton
Grassley
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Matsunaga
Mattingly
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Thurmond
Trible
Warner
Weicker
Wilson

NAYS—8

Boren
Gramm
Helms
McClure
Nickles
Symms
Wallop
Zorinsky

NOT VOTING—4

Biden
Garn
Goldwater
Mathias

So the conference report on H.R. 2005 was agreed to.

□ 1740

Mr. DOLE. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the yeas and nays ordered on the motion to reconsider be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. And that the motion to reconsider be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

[From the Congressional Record, Oct. 8, 1986, pp. H9550-H9555, H9561-H9634]

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 577 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

IV

House Calendar No. 227

99TH CONGRESS
2D SESSION

H. RES. 577

[Report No. 99–975]

Waiving certain points of order against the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, and against the consideration of such conference report.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1986

Mr. DERRICK, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

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RESOLUTION

Waiving certain points of order against the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, and against the consideration of such conference report.

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, all points of order against the conference report and against its consideration are hereby waived, and debate on the conference report shall continue not to exceed three and one-half hours.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, I yield the customary 30 minutes, for the purpose of debate only, to the gentleman from Tennessee [Mr. QUILLEN] pending which I yield myself such time as I may consume.

(Mr. DERRICK asked and was given permission to revise and extend his remarks.)

Mr. DERRICK. Mr. Speaker, House Resolution 577 is a rule providing for consideration of the conference report on H.R. 2005, the Superfund Amendments of 1985. The rule waives all points of order against the conference report and against its consideration. The rule also provides that debate on the conference report shall not exceed 3¼ hours.

Mr. Speaker, this conference report represents several years effort by several of our colleagues in this body. It overhauls and expands by more than fivefold the Superfund Hazardous Waste Cleanup Program.

This conference agreement authorizes some $8.5 billion in Superfund spending for the next 5 years. These funds will be used to pay costs associated with Government-conducted hazardous waste site cleanups, enforcement efforts to require companies to clean up sites for which they are responsible, and other program costs.

This conference report will mandate that the Environmental Protection Agency begin cleanup activities at a minimum of 375 sites and establish statutory procedures for negotiated settlements between EPA and companies responsible for waste sites to ensure that the agency will not enter into settlement agreements which could be interpreted as favorable to industry.

Mr. Speaker, there are many other important programmatic issues, such as the new program for underground petroleum tank cleanup, which will be fully discussed during the 3¼ hours of debate provided on the conference report. It is also apparent, Mr. Speaker, that the revenue portions of this package will be fully debated.

The $8.5 billion in revenues to fund Superfund for the next 5 years will be raised from the following sources: $2.75 billion from taxes on petroleum; $1.4 billion from existing taxes on feedstock chemicals; $2.5 billion from a new broad-based tax on corporate income which is raised by levying a tax of $12 per $10,000 assessed on corporations under the "alternative minimum tax" adopted as part of the recent tax reform bill; $1.25 billion from general revenues; and $600 million from interest earned by the Superfund. Finally, a separate $500 million trust fund is established and funded by a 0.1-cent-per-gallon tax on motor fuels to pay for the cleanup of leaking underground storage tanks.

Mr. Speaker, some of our colleagues may argue with some of the revenue provisions carried in this conference report. Overall, however, the agreement provides the necessary funding and programmatic changes to ensure a committed national Superfund effort for the next 5 years The conference agreement strikes a reasonable balance and represents a consensus on moving toward enactment of this necessary legislation.

Mr. Speaker, taxing authority for the Superfund Program expired on September 30, 1985. And although we have provided two separate interim funding bills for Superfund, cleanup activities at more than 200 hazardous waste sites have been delayed. We simply cannot wait any longer.

As our colleagues are no doubt aware, this conference report was adopted in the other Chamber last week on a vote of 88-8. It is time to lay aside differences over narrow issues and move toward enactment of legislation which will demonstrate our commitment toward resolving perhaps the major environmental challenge confonting us.

Mr. Speaker, I urge my colleagues to support this rule, and to support the conference report.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, as Members are aware, this conference report was approved by the other body on a vote of 88 to 8. It is a good conference report with regard to the reauthorization of the toxic waste site cleanup program and a good conference report in regard to the taxing system devised to pay for it.

I hope it will receive an overwhelming bipartisan vote in the House as it did in the other body. We are now in the final days of the 99th Congress. We have worked on this bill all through this Congress. We are now at the point of final congressional approval. The need is urgent.

The Environmental Protection Agency is running out of money and has announced its intent to cancel a great number of vital cleanup projects already. More will follow if we fail to reauthorize the program and provide the money.

Mr. Speaker, we are rapidly approaching a desperate situation.

The Superfund Program is about to shut down. We must pass this conference report and get on with the job of cleaning up our dangerous toxic waste sites. The conferees have worked their hearts out on this important bill, and they have hammered out a good agreement. They deserve our commendation; they deserve our support.

I ask for a "yes" vote on the rule and a "yes" vote on the conference report.

Should there be an effort made to vote down the previous question, I oppose that and I urge you to vote for the previous question.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Kentucky [Mr. PERKINS].

Mr. PERKINS. I thank the gentleman for yielding time to me.

Mr. Speaker, if I may engage the gentleman from Ohio [Mr. ECKART], in a colloquy. I would like to clarify the legislative intent of section 101(b) which amends paragraph (20) of section 101 of CERCLA. Is it the gentleman's understanding that the national priorities list site located at Maxie Flats, Fleming County, KY, the Commonwealth of Kentucky is a 10-percent State cost-share site instead of a 50-percent site? This is because the Commonwealth of Kentucky only became owner or operator as a result of an involuntary acquisition by virtue of its position as a sovereign.

Mr. ECKART of Ohio. Mr. Speaker, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. I thank the gentleman for yielding.

Yes, the gentleman from Kentucky is correct, if the Commonwealth of Kentucky became owner or operator as a result of an involuntary acquisition by virtue of its position as sovereign.

Mr. PERKINS. I thank the gentleman.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, I usually do not vote for rules that have waivers like this one does. However, in this case I am going to vote for the rule, and I suggest that other Members may want to do so, too. The problem is that we are down to the 11th hour of this session. The need for this particular program is overwhelming, it is enormous.

Therefore, I believe we must vote "yes" to have a chance to vote this important bill out.

I yield back the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield 9 minutes to the gentleman from Nebraska [Mr. DAUB].

(Mr. DAUB asked and was given permission to revise and extend his remarks.)

Mr. DAUB. I want to thank Mr. QUILLEN, our ranking member, for his generous allocation of time. I would like to spend a little time indicating to my colleagues why I rise in opposition to this rule and urge that Members vote against the previous question.

This country needs a strong Superfund Program to deal with the growing toxic waste problem.

I supported the House version when it originally passed and was sent to conference. Superfund is an important national priority and, given a reasonably sound piece of legislation, this body should hasten to pass a reauthorization bill.

☐ 1315

Unfortunately, the legislation before us today is fundamentally flawed, and I cannot support this conference report.

On the program side of this conference report, I was disappointed in our inability to move to a fault-based tort recovery system. Absent such a fault-based liability system, the liability insurance crisis in this area will continue to grow and, without affordable liability insurance, necessary cleanup resources and technologies will not be available.

Notwithstanding my concern in this liability area, my opposition to this conference report rests primarily with its tax title. While there are many times when each of us must hold our nose on portions of an otherwise good bill, the odor from this revenue title spoils the entire package.

Early on in the Superfund debate, the administration testified that it could only effectively administer $5.3 billion during the reauthorization period. Given available resources in technologies, the current size of cleanup activities and concerns about appropriate cleanup methods, this was a reasonable conclusion and was the administration's requested amount in this instance.

The conference report, however, would include $8.5 billion in the reauthorization and invite waste within the system. A recent Wall Street Journal editorial stated it right when it noted that, "No piece of legislation better exemplifies Congress' incapacity for budget management."

At a time when each of us has been asked to make the tough budget choices based on spending priorities, it seems senseless to engage in this game of how much money we can throw at this program just because it is an election year. It is a question of tax-and-spend mentality, and this Congress is faced with it, versus what ought to be some fairly exacting budgetary discipline.

The piper to be paid if Congress is committed to this funding level is to bite the bullet on new inflationary taxes.

During the early debate in this and the other body, the Superfund tax issue was largely one of using a broad-base tax versus more petroleum taxes. This conference report accomplishes the worst of all possibilities by including both a broad-base tax and increased petroleum taxes. These new taxes will be passed on to consumers, and the inflationary impact of the taxes will hit hardest with respect to this lower income and fixed income Americans who are least able to pay.

Some of my colleagues will suggest that the real inflationary effect of these new taxes will be minimal as the amounts are relatively small in comparison to the size of the American economy. At the current levels, this may be true. However, each of us must realize that this reauthorization is only the tip of the iceberg. In the long term, it has been estimated that the cleanup costs will exceed $100 billion.

In the case of the new petroleum tax, the new taxes would amount to 13 times higher than the original authorized amounts. For our troubled petroleum and petrochemical industries, the news is that those American industries will continue to bear the brunt of the Superfund tax burden. The American Petroleum Institute characterized this conference proposal as simply unjustified and unfair.

In the case of the new broad-base tax, this new tax on American business is not as broad-based as one might think. Instead of a simple gross receipt computation, the tax is based on a complicated corporate minimum tax calculation which undoubtedly falls harder on certain industries than others. The impact of this tax, based on the American industry, has not yet been flushed out. However, because there have been no hearings or debate in either of the tax-writing committees of this new tax or the appropriateness of the new tax for Superfund, we will convert from the way in which the tax bill authorized the broad-based tax calculation for the alternative minimum tax to a profits and earnings tax 3 years from now. It seems to me that we have certainly found a cash cow, a revenue source that will be indeed unbearable for most of American industry.

Now for many of my colleagues, I think that the vote today for this conference report will be difficult to reconcile with our frequent rhetoric and other decisions.

For instance, it would seem to me inconsistent that any Member signing the pledge not to increase income taxes following the tax bill could a week later vote for a $2.75 billion increase in petroleum taxes and a $2.5 billion increase in corporate taxes, most of which will be passed through in terms of consumer prices to the American taxpayer.

Similarly, if a Member intends to return to his or her home district and claim never to have voted for a tax increase, this is not a conference report which you could vote for.

And how is it that Congress can suggest that there is not enough money in the budget for revenue sharing and other programs, but we have an additional $3.2 billion to add to the request for Superfund?

While I realize that the conferees had very difficult choices to make, it is not necessary at this time to turn to greatly increased petroleum taxes or to broad-base taxes. In this bill, if you vote for it today, you will be voting for a tax that will be highly anticompetitive with respect to our imports and exports. This is a very antiexport kind of a bill for our Congress to be undertaking, very trade anticompetitive, for we will tax imported petroleum, adding to the Northeast, I might point out, and to all those who are interested in farming and agricultural issues, the highly inflationary impact of an import tax on the refined by-product of crude oil and import tax on oil. How many times have Members come to this well and said they would not under any circumstances vote for an import tax on home heating fuel or on farmers or on petrochemicals or chemicals for industry? How many times have you heard that? If you vote for this rule and/or for this bill, you will be voting for an import tax on imported oil.

During the markup of the House legislation in the Ways and Means Committee, I offered a concept to pay for the bill. We will have plenty of time to talk about that, I would imagine, when we are in the actual 3½ hours that have been allocated for the debate.

I would like to summarize that if in fact you would join me in voting to defeat the previous question, I will move promptly to amend the rule to take up the question of only the tax title, leaving the rest of the bill unamended in form under this closed rule, and in a position for this House to work its will on all of the other substantive provisions of the bill.

The American Petroleum Institute, the National Taxpayers Union, the merchandise folks, and the National Retail Merchants Association, as well as the Grocery Manufacturers of America, all join with me in asking you to vote down the previous question. Those are four of the many groups who ask all of you today to take a careful look at the tax section. Your opportunity when you would help me vote down the motion on the previous question would be to say that you do not like the tax title. That is all your vote would mean. And it gives you a chance to be on record opposed to this very convoluted process.

The Downey-Frenzel amendment was given up in conference. The issue of a waste-end tax was given up in conference. The House has lost every major battle with respect to the tax title, and I do not think that is a very fitting way for us to act in the 11th hour given the circumstances of fleeting logic, the element of fear and the loss of faith, in a process that would allow in the continuing resolution those funds which are currently fenced off in the conference now for Superfund to be added to a continuing resolution right along with the other 13 departments of government that we propose to continue to fund in that way without adding to the deficit and without shutting down the cleanup, or the prospects for cleaning up, any of the toxic waste and dump site locations that have been identified by EPA for that purpose during the next year and a half. Logic, merit, and good sense dictates to the House today we try and in the next 10 days to do a better job on title V. And it is for that reason that I urge my colleagues once again to join with me, to join with the Grocery Manufacturers of America, the American Petroleum Institute, the National Taxpayers Union, and the National Retail Merchants Association in voting your expression for tax increases by helping me vote down the previous question.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from New Jersey [Mr. FLORIO].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, we will have plenty of time to discuss these matters the previous gentleman raised. But suffice it to say at this point that the point that the administration had supported only a $5 billion bill was correct. Both Houses of this Congress rejected that initiative, in large measure because it would have radically changed the nature of the Superfund Program by virtually giving back the responsibilities to the States. That proposal which was rejected immediately would have shifted and doubled the burden of the Superfund Program to the States.

We are left at this eleventh hour of the Congress with a bill that both Houses are in the process of passing by overwhelming margins. The cost is as the gentleman talks about, a $9 billion bill for the total package. The administration has not yet to this day come forward with its suggestion as to how it should be funded.

The funding provision in this bill is one that is equitable. It is spread across a number of industries. It is one that had the support of the other body by an overriding margin of 88 to 8. And now we are at the point of making a determination as to how it is we should allocate the cost. The proposal before us is a reasonable approach.

The question with regard to cost has to be couched in terms of what it is going to cost us if we do not clean up these sites, and it is going to cost us far more in terms of public health, contaminated water, and a whole host of other environmental problems which will only get much worse if we do not deal with this problem now.

□ 1325

So I think this is a reasonable rule. I think the conference report is reasonable and has overriding support in a bipartisan way, and we should get about the effort of passing this bill.

The SPEAKER pro tempore (Mr. MURTHA). The Chair will remind the Members not to refer to votes that have been taken in the other body.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding me this time.

Mr. Speaker, the issue before us is the rule. Let me read to the Members from the rule. The rule says that we are "Waiving certain points of order against the conference report related to provisions of law to make minor improvements."

That is the operative language here; that we are making "minor improvements." If you regard a $2.5 billion, value-added tax as a minor improvement, then maybe you should vote for this rule. If you regard a $2.8 billion imported oil fee and domestic oil fee as a minor improvement, maybe you ought to vote for this rule.

I suggest that Washington has gone crazy if they think that the American people believe that a $5 billion increase in taxes is a "minor improvement." We are waiving points of order in order to make those things in order because the fact is you could not bring those taxes to this floor if you did not have this rule.

We are making an evasion around the rules of the House in order to bring at least that $5 billion worth of taxes to the floor. Those are the "minor improvements" that we are talking about.

My constituents do not regard a value-added tax that will raise the price of consumer products across this country as a minor improvement; they do not regard that as something minor. They do not regard the fact that you are going to raise their home heating bills and their gasoline bills this next year as some kind of minor improvement. They regard it as a fairly major item in their pocketbooks.

This will hit the Northeast particularly hard; it is going to hit the length and breadth of America. I would predict this: It will also have a dramatic impact on the economy. When you raise consumer prices, you are going to raise inflation rates. When you raise inflation rates you are going to raise interest rates. The bottom line is that what we are doing here could end up being an economic disaster.

I do not think tax increases are what the American people need at this point. The American people are not essentially undertaxed; they are overtaxed. This bill will add more. By adopting this rule, you are assuring that we will add more taxes to the pocketbooks of the American family. That is just plain wrong. It is not a minor improvement; it is a major change in policy that ought not be adopted.

Mr. DAUB. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Nebraska.

Mr. DAUB. I thank the gentleman for yielding to me.

Mr. Speaker, I certainly applaud the gentleman's statement. I want to indicate to the previous speaker that by a one-margin vote in the Ways and Means Committee we lost the mechamism to provide $8.5 billion by phasing up the annual Superfund levels to reflect the way in which EPA itself could gear up over the 4 years of this reauthorization. Use borrowing authority and general revenues and other funds, including the dry weight, waste end tax at a reasonable amount to encourage the polluter pays idea. We have forgotten that; the House gave up on that. I think that is a major flaw in the bill.

Mr. WALKER. I thank the gentleman.

I would simply make the point again that when you adopt this rule you are literally saying to the American people that you regard a $5-billion increase in their taxes as a "minor improvement."

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN].

(Mr. GLICKMAN asked and was given permission to revise and extend his remarks.)

Mr. GLICKMAN. I thank the gentleman for yielding me this time.

Mr. Speaker, there is an old expression: "The perfect is the enemy of the good," and in this case, listening to my colleagues, Mr. DAUB from Nebraska and Mr. WALKER from Pennsylvania, I see a scenario where we could end up with no Superfund bill because we could never find a perfect bill.

We have wrestled with this thing for years and years and years, and just in the last session I have never experienced as much difficulty and torture in getting a piece of legislation out. The work product I think is good; it is the most important environmental bill we will have voted on in this Congress for sure. I do not think there is any question about that.

Yes, there are some things that I would like not to see in the tax section that are currently there, and yes, there are some things in the substantive section, but we have got hundreds and hundreds of toxic waste sites in America that have to be cleaned up. This bill is the only game in town to clean it up.

There were a couple of inaccuracies mentioned before in one of the speeches. One is that this is a value-added tax bill or a national excise tax. That is just entirely untrue. There is no value-added tax in this bill. There is no national excise tax. What the conferees did is they worked very hard to put together a combination of taxes that would be the least offensive in order to provide the revenues to clean up the toxic wastes that we have.

It seems the opponents of this rule want to do the thing that we have been doing for years in this country, they want to have the program but they do not want to have the money to pay to clean up the program. You just cannot do it.

Too many people will die of cancer, too many people will lose their children, too many people will have their health affected for years and years and years unless this clean up takes place.

This rule is a fair rule; we ought to go ahead and vote for the rule and for the bill. Start the process to clean up America. Our constituents deserve no less.

Mr. QUILLEN. Mr. Speaker, I yield back the balance of my time.

Mr. DERRICK. Mr. Speaker, I yield back the balance of may time and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DAUB. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 311, nays 104, not voting 17, as follows:

[Roll No. 440]

YEAS—311

Abercrombie
Ackerman
Akaka
Alexander
Andrews
Annunzio
Anthony
Aspin
Atkins
AuCoin
Barnes
Bartlett
Barton
Bates
Bedell
Beilenson
Bennett
Bentley
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boulter
Boxer
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Campbell
Carper
Chandler
Craig
Crockett
Daniel
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
DeWine
Dicks
Dingell
DioGuardi
Dixon
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
Erdreich
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frenzel
Frost
Fuqua
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hillis
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)

Chapman
Chappell
Clay
Clinger
Cobey
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conyers
Cooper
Coughlin
Courter
Coyne

Gallo
Garcia
Gaydos
Gekas
Gephardt
Gibbons
Gilman
Glickman
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini

Levine (CA)
Lipinski
Livingston
Loeffler
Long
Lowry (WA)
Luken
Lundine
MacKay
Madigan
Manton
Martin (NY)
Martinez
Matsui
Mazzoli

McCain
McCloskey
McCurdy
McDade
McGrath
McHugh
McKinney
McMillan
Meyers
Mica
Mikulski
Miller (CA)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Oxley
Panetta
Pashayan
Pease
Penny
Pepper
Perkins
Pickle
Price
Quillen

Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Rodino
Roe
Rogers
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schumer
Seiberling
Sharp
Shelby
Sikorski
Sisisky
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NJ)
Snyder
Solarz
Solomon
Spratt
Staggers
Stallings
Stangeland
Stark

Stenholm
Stokes
Stratton
Studds
Sundquist
Sweeney
Swift
Synar
Tallon
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Watkins
Waxman
Weaver
Weber
Wheat
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (FL)
Young (MO)
Zschau

NAYS—104

Anderson
Applegate
Archer
Armey
Badham
Bateman
Bereuter
Brown (CO)
Burton (IN)
Byron
Callahan
Carr
Chappie
Cheney
Coats
Combest
Conte
Crane
Dannemeyer
Daub
DeLay
Dickinson
Donnelly
Dornan (CA)
Dreier
Duncan
Dyson
Early
Edwards (OK)
English
Evans (IA)
Fiedler
Frank
Franklin
Gejdenson
Gonzalez

Gregg
Hammerschmidt
Hansen
Hartnett
Hertel
Hiler
Holt
Hopkins
Hunter
Hyde
Ireland
Jeffords
Kemp
Latta
Lewis (CA)
Lewis (FL)
Lightfoot
Lloyd
Lott
Lowery (CA)
Lujan
Lungren
Mack
Markey
Marlenee
Martin (IL)
Mavroules
McCandless
McCollum
McEwen
McKernan
Michel
Miller (OH)
Moorhead
Myers
Packard

Parris
Petri
Porter
Pursell
Roberts
Robinson
Rudd
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Siljander
Skeen
Smith (NE)
Smith, Denny
(OR)
Smith, Robert
(NH)
Smith, Robert
(OR)
Snowe
Spence
St Germain
Strang
Stump
Swindall
Tauke
Taylor
Vander Jagt
Walker
Whitehurst
Wolf
Wolpe
Young (AK)

NOT VOTING—17

Barnard
Boucher
Breaux
Burton (CA)
Carney
Fowler

Gingrich
Grotberg
Jacobs
Jones (OK)
Kindness
Kleczka

Mitchell
Moore
Roemer
Rose
Weiss

□ 1345

Messrs. ST GERMAIN, LUJAN, GEJDENSON, MAVROULES, and WOLPE changed their votes from "yea" to "nay."

Mr. WORTLEY and Mr. LOEFFLER changed their votes from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. KLECZKA. Mr. Speaker, I was unavoidably detained for this morning's session. Had I been here I would have voted "aye" on rollcall No. 440.

The SPEAKER pro tempore. (Mr. MURTHA). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 339, noes 74, not voting 19, as follows:

[Roll No. 441]

AYES—339

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Aspin
Atkins

Courter
Coyne
Craig
Crockett
Darden
Daschle
de la Garza
Dellums
Derrick
DeWine

Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hatcher

AuCoin
Barnes
Bartlett
Barton
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boulter
Boxer
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Byron
Campbell
Carper
Carr
Chandler
Chapman
Chappell
Clay
Clinger
Cobey
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin

Dickinson
Dicks
Dingell
DioGuardi
Dixon
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Goodling
Gordon

Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jacobs
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lipinski
Livingston
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Lowery (CA)
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Lundine
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (CA)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan

Oxley
Panetta
Parris
Pease
Penny
Pepper
Perkins
Pickle
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Rodino
Roe
Rogers
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo

Solomon
Spratt
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Sweeney
Swift
Synar
Tallon
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Waxman

Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens

Sabo
Savage
Saxton
Schaefer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sharp
Sikorski
Sisisky
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NJ)
Snyder
Solarz

Weaver
Weber
Wheat
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (FL)
Young (MO)
Zachau

NOES—74

Applegate
Archer
Armey
Badham
Brown (CO)
Burton (IN)
Callahan
Chappie
Cheney
Coats
Combest
Crane
Daniel
Dannemeyer
Daub
DeLay
Donnelly
Duncan
Edwards (OK)
English
Franklin
Gonzales
Gregg
Hammerschmidt
Hansen
Hiler

Ireland
Jeffords
Kemp
Latta
Lewis (CA)
Lewis (FL)
Lightfoot
Lloyd
Lott
Lujan
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Marlenee
McCandless
McEwen
McKernan
Miller (OH)
Myers
Packard
Petri
Porter
Robinson
Rudd
Sensenbrenner
Shaw
Shelby

Shumway
Shuster
Siljander
Skeen
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Spence
St Germain
Strang
Stump
Sundquist
Swindall
Tauke
Taylor
Vander Jagt
Walker
Watkins
Whitehurst
Young (AK)

NOT VOTING—19

Barnard
Breaux
Burton (CA)
Bustamante
Carney
Davis
Foley

Fowler
Grotberg
Hartnett
Hunter
Jones (OK)
Kindness
Moore

Pashayan
Roemer
Rose
Scheuer
Weiss

□ 1400

Mr. LUNGREN changed his vote from "aye" to "no."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

* * * * * * * * *

p. H9561

CONFERENCE REPORT ON H.R. 2005, SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

Mr. DINGELL. Mr. Speaker, pursuant to the provisions of House Joint Resolution 577, I call up the conference report on the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report, see proceedings of the House of Friday, October 3, 1986.)

The SPEAKER pro tempore. Pursuant to House Resolution 577, the gentleman from Michigan [Mr. DINGELL] will be recognized for 1 hour and 45 minutes and the gentleman from New York [Mr. LENT] will be recognized for 1 hour and 45 minutes.

PARLIAMENTARY INQUIRIES

Mr. CRANE. Mr. Speaker, may I be recognized?

Mr. DINGELL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. DINGELL. Mr. Speaker, is the time that is now being used being taken out of the time that is fixed under the rule?

The SPEAKER pro tempore. The gentleman has not been recognized yet, so this time is not being taken out of the gentleman's time.

Mr. CRANE. Mr. Speaker, may I inquire as to whether the majority or minority managers of this conference report are opposed to it?

The SPEAKER pro tempore. Is the gentleman from New York [Mr. LENT] opposed?

Mr. LENT. Mr. Speaker, the gentleman from New York is supportive of the conference report.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. CRANE] would be entitled to one-third of the time if he opposes.

Mr. CRANE. Mr. Speaker, I do oppose, and under clause 2, rule XXVIII, as leader of the opposition, I will be reserved 1 hour and 10 minutes?

The SPEAKER pro tempore. The gentleman from Illinois will be entitled to that time.

Mr. CRANE. I thank the Chair.

Mr. DINGELL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. DINGELL. I understand, under the ruling of the Chair, that the time is apportioned, one-third to the gentleman from Illinois [Mr. CRANE], or some Member in opposition to the legislation; one-third to the gentleman from New York [Mr. LENT]; and one-third to myself for subsequent apportionment.

The SPEAKER pro tempore. The gentleman is correct.

Mr. DINGELL. Mr. Speaker, pursuant to the agreement of the committees of jurisdiction, I ask unanimous consent that the 2 hours and 20 minutes controlled by myself and the gentleman from New York be equally divided and controlled as follows, with the right of Members controlling the time to yield time to other Members; 35 minutes between myself and the gentleman from New York [Mr. LENT] on behalf of the Committee on Energy and Commerce; 35 minutes, between the distinguished chairman and the ranking minority member of the Committee on Public Works and Transportation; 35 minutes between the distinguished chairman and ranking minority member of the Committee on Ways and Means; 15 minutes between the distinguished chairman and ranking minority member of the Committee on the Judiciary; 15 minutes between the distinguished chairman and ranking minority member of the Committee on Merchant Marine and Fisheries; and 5 minutes between the distinguished chairman and ranking minority member of the Committee on Armed Services.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. LENT. Mr. Speaker, reserving the right to object, I will not object because the gentleman and I have discussed this allocation of time in an effort to be fair to all of the parties who have an interest and have jurisdiction over this particular legislation, but the gentleman's request, in other words, provides for an equal allocation of time, 70 minutes to the majority, 70 minutes to the minority, and 70 minutes to the gentleman from Illinois [Mr. CRANE].

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. LENT. I yield to the gentleman

from Michigan.

Mr. DINGELL. Mr. Speaker, I am willing to do it that way, but I understand the rule is different. It will be 17½ minutes between the chairman of the Committee on Energy and Commerce [Mr. Dingell] and my distinguished friend, the gentleman from New York [Mr. Lent], the ranking minority member.

The gentleman from Illinois [Mr. Crane] has already gotten his time under the rule, that portion which is available to him.

Mr. LENT. I thank the gentleman, I thank the Chair, and, Mr. Speaker, I withdraw my reservation of objection.

Mr. CRANE. Mr. Speaker, reserving the right to object, the gentleman ran through the time allocations of the various committees of jurisdiction, but I did not get that total.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Speaker, the total would be two-thirds of the time fixed under the rule, two-thirds of 3½ hours. The other third would be apportioned to those who are opposed to the conference report.

Mr. CRANE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. The Chair would state to the gentleman from Illinois that his 1 hour and 10 minutes is protected under his unanimous-consent request.

Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Michigan [Mr. Dingell] for 17½ minutes.

Mr. DINGELL. Mr. Speaker, I am pleased—at long last—to bring before the House the conference report on H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

Superfund is one of this Nation's most important environmental programs. As a result of its unfortunate history of mismanagement, however, it is also the most beleaguered program the Environmental Protection Agency [EPA] administers. The situation has led to 3 years of congressional debate, not only over the effective means of cleaning up Superfund sites, but also over the level of confidence we as a nation should place in the EPA.

A few in this debate believed that Superfund should not be reauthorized.

Some sought persistently to increase funding but to make no changes.

The administration sought restricted program changes and 5-year funding at an inadequate level of $5 billion.

And some sought the politically expedient road: to flog EPA once again for its past, thoroughly repudiated administration of the Superfund Program by writing a law which is overly prescriptive of how the Agency should operate.

It was a difficult task to bring these divergent views together.

The bill we bring back to the House strengthens the Superfund Program in every way and is a thorough repudiation of those who sought no program changes. But the bill also retains the one underlying principle which is so necessary to an effective program—it is not so restrictive as to prohibit EPA from administering the program. When enacted, H.R. 2005 will give EPA the flexibility to revitalize the Superfund Program, to ensure cleanup of abandoned hazardous waste sites, and to protect communities exposed to the dangerous toxic chemicals that have been dumped at those sites.

While I wish this were a totally joyous occasion, I must note two recent events which disappoint me.

The first is the apparent decision by senior administration officials to recommend that the President veto this bill. I hope that the President will not heed such poor advice. There is clearly an overwhelming majority of Americans who support this program and want it to survive. I am confident that the House will join the Senate in voting, by a large margin, to send this conference report to the President. I hope the President will take note of the breadth of support these votes will represent.

Mr. President, a veto will kill the Superfund Program and throw the entire Environmental Protection Agency into disarray. You will be playing chicken with the health of the American public. Signing this bill, however, will be an opportunity to improve the otherwise dismal environmental record the administration has compiled.

The other event which has disappointed me was the statements inserted in the Congressional Record, without any opportunity for debate, during the other body's consideration of the conference report.

Normally, floor statements and colloquies serve a legitimate purpose. They allow Members to clarify provisions or to obtain specific interpretations of the intent of the conferees in relation to specific constituent concerns or ambiguities. This process is especially important for Members who have not been conferees and have no other opportunity to clarify an issue.

In the case of Superfund, the floor statements by the other body go far beyond their normally accepted role. The bulk of the statements are from Members who were conferees. During the 6 months of conference, these Members had ample opportunity to argue specific points of view and to clarify ambiguities. Views and clarifications which were agreed upon by a majority of the conferees have been included in the conference report. Unfortunately, some of the statements appear to be an attempt to reopen issues on which specific Members did not prevail during the conference process.

There are numerous specific references that are troubling, such as the statement that research and development moneys can be used for building renovation, a proposition specifically rejected by the conferees, and therefore excluded from the conference agreement. The areas in which the disparities between the conference report and the floor statements are greatest appear to be judicial review (section 113), response action contractors (section 119) and cleanup standards (section 121).

The conferees spent 6 months negotiating every word of the legislative language and the statement of managers. The House conferees believed that the two bodies had reached a full and complete compromise and the House will stand by that compromise. Much of what appears in floor statements during the other body's debate goes beyond the agreement of the conferees. Such statements are nothing more than opinions of individual Members about what the legislation might have said or what they wish it said.

Many of our colleagues played significant roles in bringing this legislation through the House and the conference committee. I would like to congratulate all of my colleagues on the committees of jurisdiction for their dedicated work on this bill: the members of the Committee on Energy and Commerce, the Committee on Public Works and Transportation, the Committee on the Judiciary, the Committee on Merchant Marine and Fisheries, and the Committee on Ways and Means.

I would like to express my appreciation also to all the Members who served on this difficult conference committee.

I would like especially to recognize the gentleman from Ohio [Mr. ECKART], and the gentleman from New York [Mr. LENT], who had the foresight to draft the original version of the House-passed Superfund bill, H.R. 2817. Both were crucial players throughout House consideration of the bill and both played major roles in negotiating the tough compromises with the other body which were needed to complete the conference.

Several other Members also deserve the special appreciation of this body for the expertise they developed in specific areas and for negotiating the House position in those areas:

The gentleman from Kansas [Mr. GLICKMAN], took on the important role of defending the House position on the judicial issues including settlements, citizen suits, and judicial review, and on the response action contractor provision;

The gentleman from Washington [Mr. SWIFT], took an early role in shaping cleanup standards and played a critical role in conferencing a workable Community Right-to-Know Program;

The gentleman from Kentucky [Mr. SNYDER], provided important support in negotiating titles I and II of the final conference report;

The gentleman from Massachuetts [Mr. FRANK], played a critical role in defending the House position on the judicial issues; and

The gentleman from North Carolina [Mr. JONES], played a critical role in the areas of natural resource damages, ocean incineration and statutes of limitations, and he successfully pressed the Senate into considering oil spill legislation.

I have asked each of these Members to respond specifically to some of the misleading statements made by the other body.

I would also like to express my appreciation to:

The gentleman from Oregon [Mr. WYDEN] for authoring the original research and development provision and the risk retention provision;

The gentleman from Louisiana [Mr. TAUZIN] for his active participation in developing H.R. 2817 and his negotiations during the conference to protect the House's used oil provision;

The gentleman from Texas [Mr. HALL] for authoring and negotiating in conference the methane recovery provision; and

The gentleman from Louisiana [Mr. BREAUX] for his contributions to improving the hazard ranking system which is used to determine whether or not a site is included on the National Priorities List.

All of us owe a debt of gratitude to the gentleman from New Jersey [Mr. RODINO] for his invaluable leadership in developing a workable package of judicial issues in the House bill.

Finally, I would like to express my appreciation to Chairman HOWARD and to the subcommittee chairmen ROE and FLORIO for their roles as the determined opposition. Although we frequently had major differences of opinion, I appreciate their willingness to stick with what at times was a difficult process.

Mr. Speaker, H.R. 2005 provides $9 billion in additional funding to Superfund over the next 5 years to clean up the Nation's worst abandoned hazardous waste sites and uncontrolled leaking underground storage tanks. The bill builds on current law and strengthens it in all respects, while leaving the Agency with appropriate flexibility and discretion to respond to the multiplicity of Superfund sites which exist in this Nation. The bill:

Establishes national cleanup standards for Superfund sites;

Establishes a program for research and training in relation to hazardous substances;

Provides assistance to the States in fulfilling their role in the Superfund Program;

Enhances EPA response and enforcement authority; gives citizens the right to participate in cleanup decisions;

Establishes a program to ensure citizens have access to information about chemical substances that are being used in their communities;

Strengthens the role of the Agency for Toxic Substance and Disease Registry in determining the effects of hazardous substances on human health;

Ensures the cleanup of leaking underground storage tanks where responsible parties cannot be identified; and establishes a program for the training of workers at Superfund sites by providing grants which are intended to be awarded to non-profit organizations such as joint labor-management training programs, labor unions and university-based programs that are directly involved in the training of workers.

Of special importance, the program contains a new provision (section 122) designed to facilitate settlement negotiations to expedite effective site cleanup by private parties while maintaining the liability standard of the 1980 act as it has been interpreted by the Federal courts. The courts have established, as a matter of Federal common law, that the liability of potentially responsible parties at Superfund sites is strict, joint and several, unless the responsible parties can demonstrate that the harm is divisible.

The reasoning of the court in the seminal case of *United States* versus *Chem-Dyne Corporation* 572, F Supp. 802 (S.D. Ohio 1983), which established a uniform Federal rule allowing for joint and several liability in appropriate cases, correctly expresses congressional intent. Nothing in this legislation is intended to change the application of the uniform Federal rule of joint and several liability enunciated in the Chem-Dyne case and followed by a number of other Federal courts.

The new amendments also contain a provision to ensure compliance by Federal facilities with Superfund. The Environmental Protection Agency's existing authority to issue administrative orders and bring civil judicial suits against executive branch agencies is preserved. To supplement the Environmental Protection Agency's normal enforcement authorities, which have not been used as aggressively as Congress intended, these amendments establish a process to ensure that releases or threatened releases of a hazardous substance or pollutants or contaminants at Federal facilities are expeditiously identified, assessed, and evaluated under the same criteria as are applied to private facilities. Specific mandatory time frames are established for commencement of remedial investigations and feasibility studies and commencement of on-site remedial action. These amendments significantly increase the role of the States and the Environmental Protection Agency in the cleanup activities at Federal facilities.

While the provision establishes a process which leads to listing of facilities on the National Priorities List, the obligations of Federal facilities under the Solid Waste Disposal Act, including corrective action, are maintained. Thus, the corrective action authorities of the Solid Waste Disposal Act apply to Federal facilities, even though they are listed on the National Priorities List. The time frames of these amendments establish the outer limits for response action and do not exclude more expeditious corrective action taken under the authorities of the Solid Waste Disposal Act.

In short, H.R. 2005 will revitalize the Superfund Program to permit substantial progress in addressing the most pressing environmental problems facing this Nation—the protection of the public from hazardous chemicals.

Mr. LENT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LENT asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. LENT. Mr. Speaker, I rise in support of the Superfund conference report.

Mr. Speaker, first let me commend my colleagues who have been instrumental in getting this legislation before us. The distinguished gentleman from Ohio [Mr. ECKART] has worked tirelessly from the very beginning of this Congress, on behalf of the Superfund reauthorization. He is entitled to our congratulations and thanks. I also must commend the distinguished chairman of the Energy and Commerce Committee [Mr. DINGELL] for his stewardship of this important legislation.

Many other colleagues have worked on this legislation and deserve our commendation. Time will not permit me to name them all, but let me name two who will not be in this body next year. The distinguished Member from Kentucky, and ranking minority member of the Public Works and Transportation Committee [Mr. SNYDER] has played a critical role in producing this legislation. He worked skillfully in the subconferences, which were responsible for breaking the deadlock between the two bodies. I would also like to remember and commend JIM BROYHILL, the former ranking minority member of the Energy and Commerce Committee, who left us to serve in the other body. He too was instrumental in forging the Superfund legislation before us today.

Mr. Speaker, thanks also are due the staffs of the four committees involved in this legislation. Without their dedication and talent, we would not be here today.

Finally, let me thank the Administrator of the EPA, Lee Thomas. Day after day, he endured our long conferences and caucuses. He and his fine staff provided valuable advice, in the process earning the respect of all the Members. The Superfund Program we authorize today will be in good hands with Mr. Thomas.

Mr. Speaker, I have been a strong supporter of Superfund reauthorization in both this and the 98th Congress. Although I urge my colleagues to vote to approve this conference report, I am compelled to point out that this legislation may not accomplish our goal of improving and expediting Superfund cleanups.

I strongly support the addition to the Superfund legislation of provisions on cleanup standards, health authorities, information to the community and emergency response planning. As a result of the diverse pressures on the conference, however, this legislation is not a clear congressional directive to those who must implement and abide by the program. Far too often, the resolution of complex issues was to be "fuzzy." That is why this act has already been dubbed the "Lawyers Relief Act of 1986" by certain Justice Department officials. In addition, we may be guilty of "legislating science" to the extent we establish requirements or expectations that cannot be met today—not because of a lack of desire to do it—but because of a lack of scientific or technological knowledge.

Unfortunately, due to Congress' inaction, the EPA Superfund Program was effectively derailed 1 year ago. With the new funding contained in the legislation, the EPA will be able to turn its attention to getting the program back on track. In addition to getting the program up and running again, however, EPA must extensively revise its existing regulations and issue many new ones to implement the detailed provisions contained in the more than 150 pages of legislation before us today. All of this will take time. Yet time is something we have not been willing to give EPA. If the EPA is unable to meet the objectives and deadlines we have set for it throughout the bill, I hope that Congress will remember that it is the Congress that created this situation.

Next, I would like to turn to some areas of the legislation of particular interest to me. First, I would like to address leaking underground storage tanks. I am very pleased that we were able to include in this conference report an amendment to the Solid Waste Disposal Act [RCRA] that fills in a gap we left in the 1984 RCRA amendments. Although the 1984 amendments to RCRA created a leaking underground storage tank program, that program did not include funds for the EPA to take corrective action where necessary. We correct that omission with this legislation. In this legislation, we also authorize EPA to recover administratively the moneys spent for corrective action from responsible owners and operators. We also authorize the EPA to use its discretion when recovering these costs, especially where the owner and operator has maintained the required evidence of financial responsibility and equity dictates that amounts above the financial responsibility requirement not be collected from certain businesses.

Second is settlements. This legislation includes settlement provisions that, back in May 1985, were considered "groundbreaking". I am pleased to report that the idea of encouraging settlements is no longer considered groundbreaking but now a simple and obvious matter of good policy. Costly, protracted litigation threatens the effectiveness of the Superfund Program and consumes resources better spent on cleanup. It is essential that EPA and private parties join together to accomplish cleanup. Where there are reasonable bases for allocating responsibility, this should be done. We have provided EPA with a sizable cleanup fund. This money should be used not only to clean up sites where no responsible party can be found, but also as seed money to allow cleanup where at least some of the responsible parties are willing to go forward.

Third is contractor incentives. All of the money in the world—and all of the congressional mandates to EPA to complete cleanups—will not guarantee effective cleanups unless there are responsible, skilled, cleanup contractors willing to do the work. For this reason, this legislation contains provisions that exempt cleanup contractors from the possibility of strict liability at the Federal level. Unfortunately, we did not include the House provision that would have exempted these contractors from strict liability at the State level. This omission was due to a concern for States' rights in this area and not because we believe that strict liability is an appropriate concept when applied to cleanup contractors. I believer that the States should seriously consider, as some States have already done, the enactment of statutory provisions that would allow the necessary cleanup work to be done.

The fourth area I would like to address concerns Title III—Community Right To Know. Although I support the concept of a community's right to know of the risks its businesses pose, I am concerned that the legislation, if misinterpreted, could result in any useful information being buried in an avalanche of unnecessary paperwork. For example, let us consider the toxic chemical release reporting requirements of title III. Under this provision facilities must inventory the amount of extremely toxic substances that are emitted into the environment. Extremely toxic substances include both specific chemicals and general categories or families of chemicals. EPA must prioritize these substances and require the reporting of emissions for only those specific chemicals, within a general family of chemicals, that are toxic. If EPA does not do this, communities will be inundated with useless information. For example, compounds that contain copper comprise a general family of chemicals. Copper sulfate and copper oxide are both members of this family. While copper sulfate is an irritant and toxic, copper oxide is not. Therefore, having to report a small emission of copper oxide, a nontoxic compound, is not necessary.

Although I was not a conferee on the funding issue, I do want to make one observation about the funding mechanism. It taxes imported oil differently than domestic oil. This is actually a "mini"-oil import fee. This is a dangerous precedent and one shouldn't think that congressional approval of the Superfund funding mechanism is support for oil import fees.

Mr. Speaker, the negotiation process

involved in producing this agreement on the Superfund conference report was long and arduous. Every sentence in this report has been negotiated and renegotiated several times before agreement was achieved. For this reason, it is easy to understand why I was appalled on Monday, when I received my copy of the Congressional Record, to find that many of our Senate colleagues had taken the liberty to add new interpretive language to these provisions that went far beyond what the conferees had agreed upon. In many cases, the statements made in the Congressional Record directly conflicted with the conference report and cannot be subsantiated in any manner on the basis of the statutory language or and the statement of managers contained in the conference agreement.

I urge those who will work with this legislation in the future not to rely on postconference agreement statements that do not reflect the intent of the conferees. The intent of the conferees is best expressed by the legislative language, the statement of managers and the legislative history underlying the provisions adopted by the conferees from each body.

Although the Senate statements added to the Congressional Record of October 3, 1986, are peppered with inaccuracies, I would like to demonstrate this point through the example of two sections which I believe are extremely important: the new health authorities section and the cleanup standard section. I will address several other sections that are equally important in a colloquy at a later time in the debate. With regard to the cleanup standard section, I, along with my distinguished colleague from Kentucky, Mr. Gene Snyder, and my distinguished colleague from Ohio, Mr. Dennis Eckart, represented the House in the subconference group meetings where the agreement on the conference report language was first reached.

In the October 3, 1986, Congressional Record, Vol. 132, No. 135, on page S14897, a statement was made by a Senate conferee that the elements of a health assessment included "any other medical testing of individuals." This statement directly conflicts with the purpose of a health assessment and cannot in any way be supported by the agreed upon conference report. In the conference report, health assessments are defined in the following manner:

> (F) For the purposes of this subsection and section 111(c)(4), the term 'health assessment' shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The Administrator of ATSDR shall use appropriate data, risk assessments, risk evaluations and studies available from the Administrator of EPA.

The conference report does not include any mention of medical testing as a part of a health assessment. This was done for a reason. The conference report requires health assessments at every facility proposed for inclusion on the National Priorities List by December 10, 1988. It would be impossible for EPA to conduct medical testing of the people near each facility and still meet the mandatory deadline for completion of all the health assessments. In most cases, medical testing will be unproductive, especially if the threat is a potential release and not an actual release. The conference report does require, in the context of a health surveillance program, "periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk." A health surveillance program is initiated, however, only if the Administrator of ATSDR determines there is a significant increased risk of adverse health effects.

This same kind of error in accurately describing the conference report is also rampant in statements concerning the cleanup standards.

A few examples here are also warranted. On page S14916 of the October 3, 1986, Congressional Record, a Senator states that alternative concentration levels [ACL's] can only be used "when no other previously established standard or level of control—for example, water quality criteria or RMCL—applies to the hazardous substance, pollutant, or contaminant at issue."

This language again directly conflicts with the conference report agreed to by the House and Senate conferees. In section 121(d)(2)(B)(ii) of the conference report, the proposed statutory language clearly gives EPA the authority to use ACL's in lieu of water quality criteria or maximum contaminated levels [MCL's] in meeting the ground water protection standard under the Solid Waste Disposal Act. Specifically, this clause states:

> (ii) For the purposes of this section, a process for establishing alternative concentration limits to those otherwise applicable for hazardous constituents in groundwater under subparagraph (A) may not be used to establish applicable standards under this paragraph if the process assumes a point of human exposure beyond the boundary of the facility, as defined at the conclusion of the remedial investigation and feasibility study, except where—
>
> (I) there are known and projected points of entry of such groundwater into surface water; and
>
> (II) on the basis of measurements or projections, there is or will be no statistically significant increase of such constituents from such groundwater in such surface water at the point of entry or at any point where there is reason to believe accumulation of constituents may occur downstream; and
>
> (III) the remedial action includes enforceable measures that will preclude human exposure to the contaminated groundwater at any point between the facility boundary and all known and projected points of human exposure may be at such known and projected points of entry.

In other words, meeting the ground water protection standard may involve using ACL's in lieu of meeting an MCL or water quality criteria in those circumstances where ACL's are permitted under section 121.

A second example of an erroneous description of the conference report with regard to cleanup standards occurs on page S14916. Here a Senator first correctly states that hazardous substances, pollutants, or contaminants can only be moved offsite if they are transferred to a facility in which the unit receiving the substances is not leaking into ground or surface water or soil and all releases from other units at the facility are being controlled by a corrective action program. Then the same Senator goes on to incorrectly state: "In this regard, such facilities can ordinarily only meet the second condition imposed by the legislation if the corrective action has already been performed in accordance with sections 3004 (u) and (v) and 3008(h) of the Solid Waste Disposal Act." This latter statement was never agreed to by the conferees and directly conflicts with the conference report language. The conference report language—section 121 (d)(3)(B)—specifically uses the present tense in describing corrective action at releases from other units at the facility:

> (B) All such releases from other units at the facility are being controlled by a corrective action program approved by the Administrator under subtitle C of the Solid Waste Disposal Act.

A third and very important error in the Congressional Records concerns the ability of the Administrator to waive fundamental cleanup standard requirements. On page S14925 of the October 3, 1986, Congressional Record, a Senator first correctly states that permanent solutions should be implemented to the maximum extent practicable. However, the Senator then makes the following unsupported statement:

> The extent to which a particular technology or solution is feasible or practicable is not a function of costs. A determination that a particular solution is not practicable because it is too expensive would be unlawful. Tough choices on the basis of cost must be made under the fund balancing test that is set forth elsewhere in this section of the bill, not under the guise of being not practicable.

This statement has two fundamental flaws. First it defines the word "practicable" in a way that has not been agreed to by the conferees. It is our intent that the Administrator take into account several factors in determining whether a solution is practicable, including technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria. Second, and more serious, it suggests that the Administrator can waive more than the application of specific environmental standards and criteria found in subsection (d). According to this statement, waivers, such as the fund balancing test, can be used to waive more fundamental requirements found in subsection (b), including the requirement that the President select permanent solutions to the maximum extent practicable. This statement conflicts with the conference report language and could seriously undermine the implementation of the cleanup standards. The six waivers listed in subsection (d) can only be applied to the standards, limitations and criteria found under subsection (d). It cannot be applied to other requirements found in subsection (b) such as the requirement that the President select a remedial action that protects public health and the environment and that uses permanent solutions to the maximum extent practicable.

The above examples are only a sample of the many errors found in the statements in the October 3, 1986, Congressional Record concerning the Superfund conference report. They are by no means exhaustive. It is clear that many of the Senators do not have a clear grasp of the conference report language with regard to several important provisions. It is also clear, that many Senators are also using this opportunity to give interpretations to the language that has not been agreed to by the conferees.

The section in the report that is most prone to cause confusion and differing interpretations is the abovementioned cleanup standard section. This section addresses the how clean is clean issue by providing an important balance between the need for effective permanent remedies and the need for flexibility for the Administrator of EPA to select the most appropriate remedy at a specific site.

According to the provisions in this section, four basic requirements must be met in selecting remedial actions at Superfund sites. The remedial action must: First, protect public health and the environment; second, be cost effective; third, use permanent solutions or alternative treatment technologies to the maximum extent practicable; and fourth meet applicable or relevant and appropriate standards under Federal or State environmental law. In selecting a remedy at a site, the Administrator must evaluate the various alternative remedies on the basis of several factors including cost, reliability, long-term effectiveness, residual public health risk, ease or difficulty of implementation, and short-term impacts.

With regard to meeting Federal and State standards, section 121 specifically requires the Administrator to meet any standard, requirement, criteria, or limitation under Federal environmental statute or any more stringent State standard, requirement, criteria, or limitation which has been promulgated pursuant to State law if such requirement is legally applicable or relevant and appropriate. The Administrator may, however, waive those requirements if certain enumerated conditions are met.

In requiring EPA to select remedies that meet more stringent State promulgated standards, criteria, limitations, or requirements, it is important to note that CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, preempts other Federal and State environmental laws. It could not be otherwise given the structure of the statute. The laws themselves are preempted, but the Federal and State standards are to be applied through section 121. This this statute lays out its own scheme for dealing with these hazardous waste sites. The waivers provided in section 121, particularly the fund-balancing waiver, show that the other Federal and State statutes cannot as a matter of law apply to these actions taken under CERCLA, but that they serve rather as a source of standards to detemine how clean the sites must be. The ability to disregard State siting requirements in certain limited circumstances also shows that those State laws are to be used as a source for the remedy determinations under this law, but are in fact preempted by it. The provision for conducting onsite cleanups without permits is another example of how this statute preempts the others while using them to help determine the extent of the cleanup under this statute.

This section also requires the Administrator to meet State facility siting laws, except where they could effectively result in the statewide prohibition of land disposal. The application of these State siting laws, however, does not require a siting board review or other administrative process.

One area that deserves further clarification is the application of maximum contaminant level goals, known as MCLG's, under the Safe Drinking Water Act, to Superfund cleanups. MCLG's must be applied at the point of use of the drinking water if they are relevant and appropriate under the circumstances of the release. For example, the Agency should look to the surrounding drinking water supplies in determining whether MCLG's are relevant and appropriate standards for drinking water at the tap. Where the ground water is contaminated, the appropriate ground water standard should be applied when applicable or relevant and appropriate. If the remedial action involves water which is not used, or projected to be used as a drinking water source, the Administrator need not consider MCLG's in selecting the remedial action.

Relevant and appropriate standards for carcinogens are of particular concern. The Agency may never be able to meet a MCLG of zero due to the impossibility of totally removing all carcinogens from ground water. As the state of the art of detection progresses, it will become even more difficult. However, the Agency should comply with the MCLG's for carcinogens to the maximum extent practicable taking into account available technology and cost.

Another important issue concerns the appropriate use of alternative concentration limits in lieu of water quality criteria or MCLG's. As mentioned before, it is the intent of Congress the ACL's be used in lieu of water quality criteria or MCLG's in accordance with the specific conditions outlined in section 121. In the discussion of ACL's, several members have expressed concern about the legality of the ACL process and standards in the context of RCRA. This concern stems from misgivings about the scientific underpinnings of the fate and transport modeling that EPA considered using to establish ACL's. RCRA itself does not endorse or prohibit ACL's; rather, it directs EPA to establish standards, including ground water protection standards, that protect human health and the environment. Similarly, the conference report of SARA neither endorses nor prohibits the use of ACL's under RCRA or other environmental laws.

In implementing the ground water protection requirements, through ACL's or other standards, EPA may consider reliable predictions about the fate and transport of hazardous constituents in the environment as well as the likelihood of offsite exposure to such contamination.

It should be noted tht the term "facility" under CERCLA has a somewhat different meaning than that used under RCRA, particularly in the context of section 3004(n). Under RCRA, the facility definition circumscribes the set of solid waste management units for which corrective action is expected as a condition of getting the RCRA permit. This RCRA definition is in contrast to the SARA or CERCLA definition of facility.

The most important standard in section 121 requires the Administrator to select cost-effective remedies that protect the public health and the environment. Given sufficient resources and implementation time, several technologies, independently or in combination, may achieve the required level of protection of public health and the environment. The Administrator must select the most cost-effective remedy that achieves this level of protection.

This section, however, further requires the use of permanent and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In determining whether these technologies are practicable, the Administrator may take into account technical feasibility, cost, State, and public acceptance of the remedy, and other appropriate criteria. Where these remedies are not practicable or cost effective, another remedy which meets the requirements of this section must be selected.

This language and the language in section 121(b) preferring remedial action in which a principal element is treatment which permanently and significantly reduces the volume, toxicity, or mobility of the hazardous substances does not require the selection of the "lowest levels achievable with available technology." Rather, it requires the EPA to carefully consider permanent remedies and select a permanent solution, to the maximum extent practicable, if it provides for a cost-effective response and if it protects the public health and the environment. This does not require the selection of the "most permanent" remedy available; it is not intended that EPA spend millions of dollars incinerating vast amounts of slightly contaminated materials where other cost-effective alternatives would provide a high degree of permanence and protection of public health and the environment. Although remedies will be more permanent after enactment of this provision, the EPA should consider a range of permanent solutions which meet, together or in combination, the requirements of this provision.

In other words, although this section establishes strict standards for cleanups, it does not direct the selection of foolish, costly remedies where alternative cost-effective remedies protect the public health and the environment.

In spite of some reservations, I believe passage of this legislation is essential. We must let EPA get on with the job of cleanup. Only by passing this legislation can we do that. I call upon all of my colleagues to vote to approve this conference report.

The conference report states that the Administrator shall establish evidence of financial responsibility for ocean incineration commensurate with the financial responsibilities appropriate for activities with similar risks. In establishing the level of financial responsibility, the Administrator shall make two inquiries: first, what are the activities with similar risks and second, what financial responsibilities are appropriate.

In determining what is an activity with a similar risk, it is appropriate to examine EPA's March 1985 Assessment of Incineration as a Treatment Method for Liquid Organic Hazardous Wastes. In this study, EPA identifies four activities associated with ocean incineration. These activities are land transportation of waste materials to the incinerator, transfer and storage, incineration, and ocean transportation. In assessing the risks associated with ocean incinerators, EPA compares the first three activities with land incineration and the last with the ocean transportation of chemicals and petroleum.

With respect to land transportation, EPA's assessment finds that the risks associated with land incineration and ocean incineration are essentially the same since the waste must be transported to the incinerator regardless of whether the incinerator is fixed or floating. In regard to transfer and storage, EPA notes that the storage systems used by land and ocean incinerators are virtually identical and, therefore, the risks are identical. The transfer of stored waste to the land incinerator or the ocean incinerator also present essentially the same risk.

For the incineration process itself, the EPA report notes that the health risks associated with ocean incineration are 30 to 40 times less than the health risks associated with land incineration. The environmental impacts associated with both incineration processes were also determined by EPA to be minor. If fact, EPA's assessment concludes that ocean incineration of such hazardous materials as PCB's would not result in a measurable effect on the marine ecosystem. Hence, the overall health and environmental risks associated with ocean incineration are substantially less than the risks associated with incineration on land.

In regard to the ocean transportation of the waste from the port to the incineration site, EPA's assessment compares this activity to the ocean transport of chemicals and petroleum. In considering the extent of the hazards, it is interesting to note that in 1983, for example, 274 million metric tons of hazardous substances and 270 million metric tons of petroleum were transported in the Gulf of Mexico in a total of 58,895 shipments. By comparison, the total volume transported by the *Vulcanus* in a year's operation would be 0.02 percent, or one five-thousandth, of the total volume of hazardous substances alone. More hazardous chemicals are shipped through Gulf Coast ports in just 2 hours than an incinerator vessel would carry in a whole year's operations. Even if examined on an individual vessel versus an industry basis, EPA's assessment concludes that the *Vulcanus* incineration vessel has a lower spill rate than other vessels. EPA attributes this to the special construction of the *Vulcanus* with its double-hull, double bottom, controllable pitch propeller, and bow thruster.

EPA's assessment, and other EPA reports, establish what is a similar activity and appear to establish the comparative risks of these activities. With this resolved, the next issue for the Administrator is what level of financial responsibility is appropriate for activities with similar risks. The Congress has already established, by statute, the appropriate level of financial responsibility for the ocean transportation of hazardous chemicals and for the land incineration of such materials. Equity argues that similar activities with similar risks should have the same level of financial responsibility—and that level has been statutorily established by the Congress. If EPA believes that the level established by the Congress is inappropriate, then EPA should recommend changes to the Congress.

The conference report also notes that EPA recently announced its decision to promulgate revised ocean incineration regulations prior to issuing any research or operational permits. The conferees expect and intend that

EPA will promulgate final revised regulations promptly. EPA has studied the issue of ocean incineration for several years and has received thousands of public comments on all aspects of the program. I believe that this body of information is sufficient for EPA to issue its revised regulations and that EPA should do so immediately.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. CRANE asked and was given permission to revise and extend his remarks.)

Mr. CRANE. Mr. Speaker, I do not think there is any dispute in this body as to the necessity of appropriating moneys for clear and present dangers. To the extent that we have identifiable toxic waste sites that do constitute a threat to public health and safety, clearly those problems should be addressed.

However, we must recognize that in the conference report that is before us today we have gone vastly beyond what even EPA says it can efficiently handle in addressing this problem because of the sheer magnitude of money that we are talking about. In fact, it is more than a fivefold increase over the previous 5 years of funding for cleaning up toxic sites.

Second, I think it is important for individuals to recognize that the method of financing this puts a burden on targeted industries such as oil and chemicals as well as business in general, with a broad-based tax. The oil tax is on both domestic and imported oil. This will translate into higher prices, higher fuel costs especially to those living in our Northeastern States; but in addition to that, it is an added cost to people using our highways, because a part of the increased revenue comes in the form of increased gasoline taxes.

I think, Mr. Speaker, that we should if we are serious about this problem acknowledge that no new taxes are really necessary to address it.

First, a more reasonable level of funding along the guidelines that were submitted by the administration would be dictated as preferable.

Second, you can reduce levels of spending in other categories and reallocate our priorities so as to stay within the guidelines of the Gramm-Rudman-Hollings legislation.

In addition to that, Mr. Speaker, the President has repeatedly stated that he will veto any legislation with increases in taxes.

Now, we have had a number of colloquies here on the floor of the House over the past several evenings initiated by our side of the aisle. We have a big pledge card that we put down there in the well of the House urging Members to take the pledge of no new taxes.

Mr. Speaker, I and a number of my colleagues have joined in that pledge. We will not vote for any increase in taxation.

I think it is important for my colleagues to recognize that this bill if supported by Members is an increase in taxation, a quite significant increase in taxation, after we just most recently reported out our revenue neutral comprehensive sweeping tax reform for the future.

We are now turning around and advocating in this legislation a significant increase in taxes.

In addition to that, another disturbing feature of this is that we are putting burdens on some troubled industries, and the oil industry is one, at the same time that the oil industry is in a virtual state of depression. The comprehensive tax reform bill that we passed a week ago already hammers the oil and gas industry to the tune of about $10 billion in increased taxes over the next 5 years. This is hardly a propitious time, it seems to me, Mr. Speaker, to be increasing burdens on that already troubled industry.

But more importantly, if we agree as a society that this is a problem that should be addressed, and we do, I do not think there is any debate on that point, then we must acknowledge that in dealing with that problem we should all assume responsibility for it.

The fact of the matter is that chemical feed stocks, for example, have played a vital role in improving the welfare of our lives in the post World War II era. The clothes we wear, this carpeting on the floor, everything you can see in your car's interior, is a derivative of petrochemical feed stocks.

The truth is that we are the ones who have dictated this kind of innovation and modernization and improvement in the material welfare of our lives. That being the case then, why hammer industries that are not culpable? They are not culpable because we are talking about dealing with orphan sites where we cannot identify who did it.

The truth of the matter is that we

have laws on the books right now to deal with those people who engage in midnight dumping, illegal dumping. We have laws on the books, Mr. Speaker to force the people who produce toxic waste to dispose of their toxic wastes in a proper way and to absorb the cost of the disposal.

So if we are going to impose taxes then all the funding of this legislation should come out of general revenues. Let each and every American who has a stake in cleaning up our society, assume a portion of the burden of the cost of that cleanup.

Mr. Speaker, I yield such time as he may consume to our distinguished colleague, the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

(Mr. HAMMERSCHMIDT asked and was given permission to revise and extend his remarks.)

Mr. HAMMERSCHMIDT. Mr. Speaker, I want to commend the hardworking members of this conference. I was a conferee; however, I want to join the gentleman in opposition to the Superfund report.

Mr. Speaker, the hundreds of abandoned toxic wastesites around this Nation are an intolerable situation, and the patience of the American people with the failure of Congress to reauthorize a sensible and workable Superfund program has been remarkable.

I wish that I could say that patience is being rewarded with the legislation before us today. However, that is not the case, and, therefore, I cannot in good conscience, vote for this bill.

This legislation, in a nutshell, gives the Environmental Protection Agency more money that it can effectively use, and then imposes such rigid standards and so much redtape it cannot properly manage the program with the money it does get.

Certainly the flaws in this bill do not reflect the lack of a good faith effort on the part of my fellow conferees. Many months have been devoted to reaching an agreement on this very complex piece of legislation. Yet, that very complexity makes this bill an administative nightmare.

Perhaps my greatest concern from the very outset of our conference deliberations has been the need for prudent management of this program. After all, we are talking about a great deal of money—almost $10 billion of the taxpayer's money.

The administration recommended a $5.3 billion bill, and EPA said from the very beginning that it could spend that amount. Yet, we have before us an $8.5 billion bill. And bear in mind that the $5.3 billion was all that EPA felt it could spend at a time when there would have been a smooth transition from the original program and its funding levels.

Unfortunately, due to congressional paralysis, the program has not been funded properly in over a year. A number of interim funding measures have been passed, but once again, the money has run out and the program is at the brink of extinction.

So, now the program has to gear back up again. Since projects are not going to be in the pipeline and EPA has not been able to do the necessary planning to move such projects along, I do not believe that the Agency will be able to properly spend the kind of money we are authorizing in this legislation.

What we are doing, in reality, is throwing money at the problem, and that, in my judgment, serves neither the taxpayers who will be paying for the cleanup nor the cleanup effort for itself.

To make matters worse, at the same time we are showering EPA with all this money, we are binding the Agency's hands with burdensome administrative regulations and very strict standards for cleanup. Generally, I feel that the bill has gotten into far too much detail. We have tried to prescribe a specific response to every possible contingency and left little or no room for EPA to use any discretion in dealing with the problems that arise.

We give the Agency directions to set management priorities to accomplish certain goals we set out in the bill, while at the same time, we make them the subject of litigation.

With the meager flexibility allowed them, EPA will find it difficult politically and legally to change any of the stringent standards this legislation requires. That will encourage the Agency to overreact, to simply "gold-plate" the cleanup. Instead of managing cleanup of the site as prudently as it should, EPA is likely to take the easy course of choosing the most costly solution and the one for which they can expect to get the least political and legal heat.

In doing this, the Agency would end

up taking funds away from other toxic wastesites to provide treatment at a site more stringent than is actually needed to protect health and the environment.

Another burdensome area of the legislation is the community right to know provision. I agree with the basic premise that a community located near a hazardous wastesite should be aware of chemicals that threaten them, and I have no quarrel with a proper role for the Federal Government in that effort.

Unfortunately the community right to know title in this bill goes far beyond that. It would, in fact, place a tremendous burden on industry, and, in my judgment, an unmanageable burden on State and local government.

There are plenty of requirements but no funds to help State and local governments comply with the law. Consequently, there is the potential for massive noncompliance; and where companies do comply with the law, State and local agencies will be inundated with paperwork, thereby rendering the whole exercise useless.

Mr. Speaker, there are good things in this legislation, and certainly the intent of the bill is on target. The problem of toxic waste is one that we have to deal with. However, for a number of reasons, some of which I have discussed, the bill is so flawed that I cannot give it my support. The best efforts of the conferees to provide a workable Superfund program have fallen short of the mark.

At this point, I feel that the most appropriate course of action is for Congress to provide sufficient funding through the appropriations process to keep the program going until we can come back and address this issue correctly early next year. As the wise saying goes, anything worth doing is worth doing right.

Mr. CRANE. Mr. Speaker, I reserve the balance of my time.

Mr. DINGELL. Mr. Speaker, on the Energy and Commerce Committee, we would like to reserve our time.

Mr. LENT. Mr. Speaker, the Energy and Commerce Committee minority will reserve the balance of our time.

The SPEAKER pro tempore. The next committee is the Committee on Public Works. The Chair recognizes the gentleman from New Jersey [Mr. ROE] for 17½ minutes.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. ANDERSON].

(Mr. ANDERSON asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON. Mr. Speaker, I rise in strong support of the conference report to accompany H.R. 2005, to reauthorize the Superfund toxic waste cleanup program for 5 years.

As you know, the Superfund program was established in 1980 to address the growing problem of abandoned hazardous waste sites. Since that time, it has become clear that the problem of abandoned toxic dumpsites is much larger than anyone had first imagined. In fact, the Office of Technology Assessment estimates that there may be as many as 10,000 toxic hot spots scattered across the country. And the cost to clean up these sites could be as high as $100 billion.

This legislation we have before us today is a step in the right direction in tackling the problem of cleaning up these many hazardous dumpsites.

Although there are many fine provisions in the bill which I could highlight, I am particularly pleased with the community right to know program. This important provision insures that communities who happen to be located near chemical plants and hazardous facilities will be provided needed information on the types of chemicals produced, handled and stored at these facilities and information on how to deal with emergencies. Thus, in the future, chemical companies must provide communities with information about everyday releases of toxic chemicals and about the location and use of such chemicals. It also requires emergency notification and response planning in the event of a serious release in the environment.

In conclusion, I strongly urge my colleagues to support this legislation and ask that the President reconsider his veto threat of the bill so we can get on with the business of cleaning up the thousands of toxic wastesites across the United States.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from Missouri [Mr. SKELTON].

(Mr. SKELTON asked and was given permission to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, the legislation before us today marks an important turning point in the effort to clean up the Nation's worst hazardous wastesites and protect our citizens from the threat of soil and ground water contamination. I think it is fair to say that since its enactment in December 1980 the Superfund Program has not been a model of efficiency. Yet what we have learned over the past 6 years has lead to the changes contained in the pending amendments. Thanks to the skillful leadership of my distinguished colleagues, the gentleman from Michigan and the gentleman from Ohio, literally hundreds of improvements to the Superfund Program have been carefully drafted. Due to their tireless efforts, the program has new direction and purpose.

One of the most significant improvements contained in this bill concerns the more than 1 billion gallons of used oil that is generated each year. The amendment recognizes the need to improve and expand the system for recycling that oil. Currently approximately 57 percent of the used oil generated in this country is treated as a valuable product. In other words, it is burned as fuel or rerefined as a lubricant. Unfortunately, the rest of that oil, at least 241 million gallons each year, is improperly disposed of into sewers, backyards, or in the trash.

The purpose of this amendment, which is explained in greater detail in the statement of managers, is to create incentives that will encourage those who generate used oil to handle it safely. Under the amendment, service station dealers, and others such as truck stop operators and managers of oil change facilities who abide by EPA's forthcoming regulatory requirements and who offer a collection facility for used oil generated by do-it-yourselfers will be exempt from potential Superfund liability. Without this provision, there would be little incentive for managers of oil change facilities, truck-stop operators and service station dealers to accept any do-it-yourselfer-generated used oil because the threat of liability would create serious insurance and other problems.

While the amendment recognizes that the used oil recycling system in this country is essentially voluntary, and one that must be protected, I am concerned that the exemption provided in this bill is structured too narrowly. In my view, the protection from liability should extend to all those who participate in the recycling system and who manage used oil in accordance with EPA's regulatory requirements. However, I am encouraged by recent statements by the EPA's Assistant Administrator for Solid Waste who has indicated that the Agency does not intend to list used oil as a RCRA hazardous waste. EPA should be commended for this decision. In my view, it is a commonsense approach which recognizes that not only is used oil unique, but that the threat of liability and overregulation in this particular situation can severely undermine the basic goals of environmental protection.

Finally, I would like to clarify one important aspect of the role of service station dealers, truck-stop operators and others in providing collection centers for do-it-yourselfers' used oil. These businesses should be encouraged to take appropriate steps to assure that the used oil they receive has not been mixed or otherwise contaminated with hazardous substances such as pesticides or solvents. Thus, for example, businesses who insist that do-it-yourselvers certify that used oil being delivered has not been contaminated would not lose their exemption from liability if they refuse to take used oil from individuals who fail to certify. This and other forms of reasonable safeguards are consistent with the provision and should not adversely affect the exemption from liability.

Again, I commend the distinguished floor manager of this bill for his leadership on this issue and I urge my colleagues to vote for final passage of this worthwhile legislation.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from West Virginia [Mr. Wise].

Mr. WISE. Mr. Speaker, I rise in strong support of this Superfund bill, because it is the culmination of 2 years, and in the case of this Member, 4 years, and I know for some of the others here much longer than that, to bring to this floor a viable Superfund bill that truly addresses the concerns that we have.

Indeed, I am proud of the Superfund bill because much of it arises and concerns have been expressed about the chemical industry, particularly following the Bhopal tragedy and then a leak in my own district at Institute, West Virginia. Indeed, Institute and our area of the Kanawha Valley has been the subject of much interest concerning the chemical industry.

I am proud of the way that we have

responded, because we set out to be a model for the country, and indeed much of the concerns that were expressed are now enveloped in this Superfund bill. This bill has for the first time, Mr. Speaker, an extensive community right-to-know provision that guarantees the Federal right-to-know in every community. You have a right to know what is being produced in the plants around you.

Furthermore, it also guarantees that every community in this country will have emergency response to plans that will help them should there ever be a toxic emergency.

You know, we have been developing these for a long time in our area. Indeed, we think it is important in every area, no matter whether they have a chemical industry or not, to have these provisions, because it is the problems with chemical transportation, whether by rail, by barge, by truck, that can so often cause a problem.

You know, there was a leak in my district. A lot of attention was focused on that, but immediately then the national attention swung elsewhere as we recognized thousands being evacuated in different communities and it showed a need for this kind of legislation.

So I think that the Kanawha Valley has been a leader in putting together this community right-to-know and emergency response provisions.

At this time, Mr. Speaker, I would like to thank the gentleman from New Jersey, Congressman Gallo, who joined with me in drafting much of this legislation that is now being voted upon today.

Another important provision is that for the first time the Federal Emergency Management Agency will be able to assist local communities in developing emergency response plans with both training and equipment.

For the first time, there is a $5 million a year program to provide grants that should help these.

Mr. Speaker, I am also pleased that some agreement has been based on the taxation parts, because we cannot have a Superfund bill that taxes our chemical industry out of existence. Happily, this one does not. An agreement has been reached, and for the first time there is a beginning, the concept at least of a beginning of a broad-base tax that can be applied to all industries and to all users of chemical products, not just the chemical producers themselves, will pay this tax; so the burden will not fall unfairly on the chemical industry.

So for the first time look at what we have, a broad-base tax which I think is important. We have emergency right-to-know, community right-to-know provisions, guaranteeing that every community has a right to know what is being produced, and significantly, we have emergency response provisions guaranteeing that every community will have an emergency response plan. I think we have come a long way and I fully support this bill.

□ 1530

Mr. HOWARD. Mr. Speaker, will the gentleman yield?

Mr. ROE. I yield to the distinguished chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. Howard].

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Speaker, I wish to thank everyone who worked on this legislation, especially the gentleman from Michigan [Mr. Dingell], and also certainly the two champions of this legislation, Mr. Roe and Mr. Florio, from my own State of New Jersey.

Mr. Speaker, I rise in support of this legislation.

Mr. Speaker, a lot of people in this Nation will breathe a sigh of relief that the Superfund conference report is finally complete and ready to be brought before the House.

The conference report had a difficult road. In this body alone, the Superfund bill was referred jointly to two committees and sequentially to three others for the program aspects before reaching the Ways and Means Committee. The whole process was difficult for everyone involved.

I want to commend Mr. Roe, the chairman of the Subcommittee on Water Resources, for his diligent and strenuous efforts on this bill. He deserves congratulations for his work, as does the subcommittee staff.

However, we have finally reached the point where congressional action can be completed. The conference report is not everything that those of us committed to a strong environmental bill would have wanted but it does represent a major step forward in the toxic waste cleanup effort. I am pleased to have been a conferee and to have been involved in the development of this important legislation.

My main concern is that this bill will get the program moving again. For several years, there was a failure to implement the Superfund law of 1980 as intended by the Congress until the Committee on Public Works and Transportation took action against the Environmental Protection Agency. Just when it appeared that EPA was finally serious about administering the program, the authorization expired.

The problem that faces us is enormous. The Office of Technology Assessment estimates that there are 20,000 toxic waste sites around the Nation. The National Priorities List established by EPA contains less than 900 sites. It is time to get moving.

As a Member from the State with the most sites on that priorities list, I am acutely aware of the public demand to take action. It is not a matter of pointing fingers at the cause of the delay. It is a matter of a serious threat to public health, to the environment and water supplies that demands rapid and tough cleanup aciton.

This conference report will provide the mechanism for that cleanup. It authorizes $6.5 billion over 5 years for cleanup—more than five times the current program. It sets new standards to be met in cleaning up the site and it will extend the Superfund Program to the Nation's military bases.

It also includes a strong community right-to-know section that will require reports to local authorities on the use, transportation and storage of hazardous materials. It sustains the right of American citizens to know what toxic materials are in their neighborhoods.

Finally, I want to state that we expect EPA to implement this law. We will not accept any excuses this time for failure to move forward on the cleanup of Superfund sites. I intend to use the oversight authority of the Committee on Public Works and Transportation to see that the intent of Congress is followed. We acted against EPA before and we will do it again.

If implemented properly, H.R. 2005 can provide the proper resources and standards for the toxic waste cleanup effort. It has been a long time coming but it is the type of bill that the American public demanded.

The SPEAKER pro tempore (Mr. Panetta). The gentleman from Kentucky [Mr. Snyder] is recognized for 17½ minutes.

Mr. SNYDER. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. Stangeland].

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. STANGELAND. I yield to the gentleman from Missouri.

(Mr. VOLKMER asked and was given permission to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, I rise in support of the conference report on Superfund that is before us today. As we all know, this is an important toxic waste cleanup program. It is past time to seriously clean up the thousands of waste sites, including those in Missouri.

This conference agreement improves several parts of our Superfund Program, especially those that require cleanups necessary to protect public health and the environment.

Mr. STANGELAND. Mr. Speaker, it is with great personal pleasure and a certain element of relief that I rise in support of the conference report accompanying H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

Mr. Speaker, I am sure that all of the Members of this and the adjoining body are aware of the great effort that has been required to bring this legislation to a successful resolution. The issues we were asked to resolve were both technically difficult and highly divisive. Strongly held positions separated not only the House and Senate but, at times, pitted individual Members of one body against other Members of that same body. In all, Members from six House committees and three Senate committees wrestled with the difficult issues in the bill for months, during which time funds for the program were nearly exhausted on a number of occasions.

Despite our differences and despite the complexity of the issues, or perhaps because of them, we have achieved a significant victory not only for this body but for the Congress and the Nation as a whole. We have almost entirely rewritten and expanded the Superfund Program in a way that not only promises stringent environmental protection for all Americans but in a way that is fair to all parties concerned, including agriculture, business, labor and industry.

A great measure of our success is due to the strong, resourceful and dedicated leadership of the conference from both the House and Senate. I would like to take this opportunity to express my appreciation to the chairman of the conference, the gentleman from Michigan, Mr. John Dingell, who had the difficult task of trying to develop a comprehensive and cohesive package out of a crazy quilt of ideas and interests. I also want to express my thanks to all of the other House conferees that labored tirelessly through endless sessions of conference and subconference meetings, where agreements were hammered out.

Special thanks go to the gentleman from Kentucky, Mr. Gene Snyder, the ranking Republican member of the House Committee on Public Works and Transportation, and to the gentlemen from New York, Mr. Norm Lent, the ranking Republican member of the Committee on Energy and Commerce, for their untiring effort to develop constructive, commonsense solutions on some of the toughest issues. Also, the gentlemen from Ohio, Mr. Dennis Eckart deserves special mention as the Member who is probably most responsible for the way many of the issues in this bill were resolved. Also deserving of our commendation are the gentleman from Washington, Mr. Al Swift, for his work on community right to know, and the gentleman from Kansas, Mr. Dan Glickman and the gentleman from Ohio, Mr. Tom Kindness, for their contributions to the judicial issues.

I also want to express my appreciation to the leadership and members of the Senate conference committee, particularly to Senators Stafford and Bentsen for their patience and judgment in this long legislative process. Finally, I would be remiss if I failed to mention the major contributions made by the chairman of the Committee on Public Works and Transportation, Jim Howard, the chairman of the Subcommittee on Water Resources, Bob Roe, and also the gentleman from New Jersey Mr. Jim Florio. These gentlemen served as the conscience of the conference, constantly urging us to strive for the goals of environmental protection that are reflected so well in the conference report before us today. Staff as well, spent long hours. A special thanks to Errol Tyler and John Doyle of the Water Resources Staff.

Mr. Speaker, this is a sound bill, offering major improvements in virtually all aspects of the existing Superfund law. While time would not permit me to go through all of the changes that I endorse, I feel obliged to mention some of the bill's major accomplishments.

First of all, the program we are recommending represents a major increase in program funding. The original law authorized a 5-year, $1.6 billion program. Today, we bring before this body a bill that authorizes almost six times as much for the next 5 years. In my own view, the amount authorized by this bill is at the absolute limit, and may be beyond what the EPA can reasonably manage. Nonetheless, I believe we must demonstrate this country's commitment to solving our hazardous waste problems.

Perhaps more controversial than the level of funding has been the question of the source of funding for the program. In the past, the overwhelming source of the fund's revenues has come from feedstock taxes imposed on the American petroleum and chemical companies. This has been because of our commitment to the principal that those responsible for the problem should be required to pay for its cleanup.

However, a five or sixfold increase in feedstock taxes would result in a serious, and many would say, crippling burden on the American petrochemical industry. Furthermore a review of the wastes found at Superfund sites discloses that these sites are often repositories of wastes from a broad spectrum of American industry, including manufacturing, food processing, and service-related industries. Accordingly, the conference agreement adopts a funding mechanism that seeks to broaden somewhat the cost of the program among a wider segment of our economy. I believe the plan that has been developed by the Senate Finance and House Ways and Means conferees is both fair and effective and I would urge my colleagues in the House to accept it and the President to approve it.

Perhaps the most criticized aspects of the first 5 years of the Superfund Program has been the abysmally slow pace of cleanups. In 5 years, only a handful of sites were cleaned up to EPA's satisfaction and, of those, at least one wound up leaking even after it was supposed to be cleaned up. I realize that this slow pace is due to a variety of factors, many of which are not the fault of EPA. Nonetheless, I and most of the other conferees felt that mandatory, but realistic, cleanup schedules were essential in a reauthorization package. I am happy to report that the conference agreement includes schedules which I helped develop with those ends in mind. While the schedules are not as demanding as some may have preferred, they nonetheless provide a realistic yardstick against which progress can be measured. I view the schedules as the minimum pace that EPA must be held accountable for. I would urge and expect them to do more than our bill requires. However, I realize that imposing a tougher schedule as an absolute legal requirement could be counterproductive—binding the Agency's hands and resulting in delay through litigation.

Another aspect of the program that had been criticized was the lack of any mandatory cleanup standards applicable at Superfund sites. Admittedly, each Superfund site is different from every other site and it is difficult to prescribe uniform standards that make sense in every case. However, we felt that it was important to require all cleanups to comply with uniform minimum requirements of "how clean is clean." For the most part, we have built in language from the House bill that was originally developed through EPA's regulatory process. We would require that in almost all cases, cleanups comply with legally applicable or relevant and appropriate Federal or State standards or criteria. The bill contains specific exemptions from this basic requirement for limited situations where the application of Federal or State standards might frustrate the goals of the act or would be clearly inappropriate. In all cases, however, EPA must select remedial actions which are protective of human health and the environment, are cost effective and, to the extent practicable, utilize permanent solutions and alternative treatment or resource recovery technologies.

The bill makes major improvements intended to stimulate settlements under which those responsible for placing hazardous waste at Superfund sites would agree to undertake cleanups. These improvements were absolutely essential to halt the unconscionable drain on resources being consumed by litigation. They were also essential because of the gradual disappearance of liability insurance coverage for Superfund related environmental risks. To achieve these ends, the conference report contains authorization for a settlement process under which EPA can employ an enforcement moratorium coupled with a nonbinding allocation of responsibility to facilitate settlements. In addition, the conference report specifically authorizes EPA to issue covenants not to sue to limit in specified circumstances, the liability of a party who enters into a settlement agreement.

One of the major new initiatives of this bill is the comprehensive new program to ensure that communities are given the information they need to react to the environmental risks posed by toxic and hazardous chemicals. These provisions call for creation of State and local emergency planning organizations which would be provided with essential information concerning the amount and location of hazardous substances in their area. This information would be used to develop emergency plans to allow quick and effective response to environmental threats. This is an extremely ambitious new program and one that I believe should have been initiated on a somewhat more limited basis. It is a program, however, that all of us recognize needs to be started as quickly as possible. If we have to live in a society where hazardous chemicals are routinely manufactured and transported, we should all be apprised of the risks those chemicals may pose.

Another bold initiative included in the bill is an expanded program for cleanup of leaking underground storage tanks. The 1984 amendments to the Solid Waste Disposal Act authorized a regulatory program to address the problem of leaking underground storage tanks, including petroleum tanks which are not covered by Superfund. Under the amendments included in the conference report, the existing regulatory program is expanded upon to authorize EPA to require the owner of an underground petroleum tank to undertake cleanup if the tank should fail or allow EPA to undertake the work if the tank owner or operator can't or won't clean up the leak. A new $500 million fund would be established through a one tenth of a penny per gallon tax on motor fuels to pay for cleanups undertaken by EPA. This is a significant new program that will greatly enhance society's ability to react to a growing national problem.

These are but the most significant aspects of the bill we bring before the House today. Major achievements in other areas include new initiatives in the area of research, development and training, public health authorities, cleanups at Department of Defense and other Federal facilities, reform of

State procedural laws and change affecting methane recovery and ocean incineration activities. With respect to this last point, I note that the statement of managers accompanying the conference report comments on EPA's recent decision to promulgate revised ocean incineration regulations prior to issuing any research or operational permits. The conference report directs that these regulations be issued promptly. After three environmental impact statements, a five-volume environmental study, nine research burns and eight public hearings, there is no reason for EPA to delay issuing the final regulations. The regulations should be issued immediately, without reproposal and without any further regulatory negotiation process.

The statement of managers accompanying the conference report also states that the administrator shall establish evidence of financial responsibility for ocean incineration commensurate with that appropriate for activities with similar risks. In this regard, the Congress has established appropriate levels of financial responsibility for land incineration and for the ocean transportation of hazardous chemicals. If these activities are, in fact, similar to ocean incineration, then there should be no further question concerning the appropriate level of financial responsibility.

I realize that in a bill as lengthy and as complex as this there will be much that individual Members can find fault with. There are provisions in this conference report which I am not happy with myself. I also am sympathetic to the views expressed by those who argue that this bill may be a bit of a reaction to the sins of the past—that we should have kept a little more of EPA's discretion in the program. However, I realize that cleaning up this country's toxic waste is the most important environmental task with which we in Congress are confronted. We must move forward with vision to seek the solutions that will allow our children to live and play in a safe and healthy environment, while at the same time ensuring that the engine of American industry is not stifled by burdensome restriction and unnecessary costs.

Mr. SPEAKER, I believe this bill fundamentally achieves these goals. This legislation fulfills the promise of the original Superfund law. It converts a troubled, hesitant program, riddled with scandal and confusion, into what can truly be called a comprehensive environmental restoration, compensation and liability act. Therefore, I urge my colleagues in the House to join me in approving the conference report. It is, on balance, an excellent bill deserving of our support.

I realize that the President has expressed some concerns about the funding mechanism for this bill. I hope that after careful review he finds the bill as on balance as I do. We need to get this program moving again and do so quickly. This bill does that and, therefore, I support without reservation.

Mr. SNYDER. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, I rise in reluctant support of the conference report on H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

The road to Superfund reauthorization has been long and torturous. Past problems at EPA, and ongoing controversy surrounding Superfund made our task difficult from the very beginning. As the conference unfolded, our task became even more difficult because of the large number of players involved, the sheer complexity of the issues, political grandstanding, pride of authorship, and the hidden agendas of certain staff members, especially in the other body.

I wish that I could stand here today and tell you to vote for H.R. 2005 because it is a good bill. But, in good conscience, I cannot do so. Even though the bill contains some good provisions, the final product is far from perfect. In fact, it is schizophrenic in nature. Let me cite a few examples of its dual personality.

Although the bill promises to speed up the cleanup of toxic waste sites, it contains a myriad of new requirements and cumbersome procedures which virtually assure that the cleanup program will strangle itself in redtape, especially during the next 2 or 3 years as EPA first attempts to implement it.

Although the bill promises to spend $8.5 billion on cleanups over the next 5 years, this level of funding is far higher than EPA says it can spend and far higher than Congress is likely to appropriate given the current state of the Federal deficit.

Although the bill sets clear goals and schedules for EPA to meet, those goals and schedules are often unrealistic. Moreover, the bill gives citizens and other interested parties the legal and procedural tools to upset and rearrange any management priorities that EPA might establish, thereby assuring that the goals and schedules will not be met.

Although the bill gives citizens the right to know about dangerous chemicals in their communities, it establishes a right-to-know program that has the potential to inundate unsuspecting communities with so much information that it will be virtually useless. The really important information will be buried in an avalanche of paperwork.

I could go on, but I think I have made my point. Sad to say, this bill is not all that it is built up to be.

Notwithstanding my objections to the legislation, I am going to urge you to vote for the Superfund reauthorization bill.

My reasons for doing so are threefold: First, the Superfund Program—which has almost been completely shutdown for the past year—desperately needs to be reauthorized. Second, given all of the controversy and the political grandstanding surrounding the bill, Congress probably would not do any better next year. And finally, it is probably good politics to vote for Superfund, even though the bill is flawed. This is one of those unfortunate times when good politics and good legislation don't coincide.

Mr. Speaker, my comments should not be construed as being critical of our conferees.

In fact, given the difficulties involved, I think the conferees did an admirable job. Our success in getting a bill approved—no small accomplishment, I might add—was due in great measure to the tenacious and conscientious leadership of conference chairman JOHN DINGELL. He guided the conference with reason, efficiency, and a dogged determination to get the Superfund Program back on its feet.

I would also point with great appreciation to the extremely important contributions of NORM LENT, who so ably represented the Republicans on the Energy and Commerce Committee; and DENNIS ECKART, Who played a major leadership role in the forging the substantive compromise on this very complex piece of legislation.

Mr. Speaker, I would also be remiss if I did not thank our Public Works Committee Chairman JIM HOWARD, our Water Resources Subcommittee Chairman BOB ROE, and our subcommittee ranking minority member ARLAN STANGELAND for their work on Superfund. They were instrumental in the development of the public works version of the bill, and played an important role in the Superfund reauthorization process.

Yet, it is that very complexity that flaws the legislation. Despite the best and most diligent efforts by most of our conference members and staff, the compromise bill on which we finally agreed is so thoroughly complicated, it will be difficult if not impossible to administer. Because it is a compromise of so many interests, almost every provision is convoluted and complex.

Perhaps that might have been expected from the involvement of six House committees, several Senate committees, and a host of interest groups. In any case, it matters little who will be charged with administering the program from this point on. Whether the Environmental Protection Agency Administrator is Lee Thomas or another Reagan administration appointee or a Democrat or Republican in future administrations, Congress is going to have a field day calling him or her to Capitol Hill to berate EPA for not being in compliance with the act.

Sad to say, the sins of the past will continue to haunt EPA as it attempts to effectively administer this critically important program. The complexity of the legislation before us is in part an outgrowth of the mismanagement that characterized the Superfund program for a period of time. Suspicion and distrust of EPA's handling of Superfund lingers on both in and out of the halls of Congress. Responding to frequent pressure not to trust EPA to do the job right, Congress has stepped in and prescribed in detail how the Superfund program should be managed.

In so doing, we have compounded the problem, not relieved or solved it. We in Congress do not have the expertise or the information needed to properly manage the EPA, nor should we be trying to do so in the first place.

It would have been far better if we had simply given EPA clear guidance as to what we wanted to achieve with the program, while leaving the agency with discretion to deal with the problems that arise. Instead, we have in this legislation tried to prescribe a specific response to meet every possible contingency. In the process, we are binding the hands of the agency and will actually impede the level of program implementation we are seeking.

Actually we started this whole process with an imperfect product. The original Superfund bill was poorly drafted to begin with, and what we have done is make it worse. For instance, the Supreme Court, in a 1986 decision, said that the first Superfund bill was "not a model of legislative draftsmanship." It characterized one provision dealing with contribution to the fund as "at best inartful and at worst redundant." Again, a 1984 U.S. district court in Illinois concluded tht the statute was "hastily and inadequately drafted."

And one of our former Public Works and Transportation Committee colleagues, and at the time ranking minority member of the committee, Congressman Bill Harsha, was pretty blunt in his assessment of the act. He complained that the final version was vague and internally inconsistent to such an extent that, in his words, "the bill is not a Superfund bill—it's a welfare and relief act for lawyers."

Well, Bill Harsha was right. Superfund has been a relief act for lawyers, and it is going to get worse as a result of the bill before us today.

Yet, with all of the baggage this legislation carries. It is of overriding importance that we get the Superfund program back on track. Therefore, in the interest of getting this program moving again and releasing the $8.5 billion for Superfund itself and another $500 million for the leaking underground storage tank program, I will vote for the bill.

The American people want these toxic waste sites cleaned up, and they want their underground water supplies free of contamination and the threat of contamination posed by leaking underground tanks. That is clearly what our citizens demand and what they have every right to expect.

Mr. Speaker, at this point I would like to make a few points about some of the provisions in the bill. However, in doing so, it is not my intent to undermine in any way the conference report on H.R. 2005, or the statement of managers accompanying such report.

I was surprised and dismayed by the legislative history created by the other body in Friday's Congressional Record—page S14895 to S14938. I was surprised because the vast majority of the "legislative history" was not actually spoken on the floor of the other body. The total debate time was only 30 minutes and very little of the actual debate dealt with the specifics of the legislation. Yet the Congressional Record is filled with what would have been hours and hours of debate. Almost all of this detailed explanatory material was simply inserted in the Record and was not actually brought to the attention of the Members of the other body before they voted on the Superfund Reauthorization Act.

I was dismayed by the other body's legislative history because so much of it was at variance with the conference report and the statement of managers. Many of the issues raised in the statements were issues that were raised in conference and rejected by the conferees. Obvisously some staff members who were unable to persuade a majority of the conferees to accept particular statutory language have succeeded in having inserted in the legislative history statements favorable to their position, in the hope that a court will be persuaded to construe the statutory language in light of these statements. I hope that the courts will not be fooled by this tactic and will rely instead on the conference report and the statement of managers.

Let me cite just one example of now outrageous the Senate floor statements are. On page S 14917, during a discussion on the 30-day window on the effective date of the cleanup standards provision, the following statement is made:

> This requirement places a nondiscretionary duty on the Administrator, carrying out the responsibility of the President under section 121, to apply the requirements of section 121 in selecting remedial actions during the 30-day period following enactment.

With due deference to the views of my colleagues in the other body, I must take strong exception to this statement. The conference report reads in pertinent part:

> The ROD was signed, or the consent decree lodged, within the 30-day period immediately following enactment of the act, the Administrator shall certify in writing that the portion of the remedial action covered by the ROD or consent decree complies *To the maximum extent practicable* with section 121 of cercla. [*added*]

The statement of managers reads as

follows on this issue:

> The requirements of section 121 apply *to the maximum extent practicable* to a remedial action for which the record of decision is signed (or the consent decree is lodged) within the 30-day period immediately following enactment of the act, and the EPA Administrator must certify in writing that such requirements have been complied with *to the maximum extent practicable* with section 121 of cercla. [*added*]

Thus, it is clear in both the conference report and the statement of managers, that the requirements of section 121 apply only "to the maximum extent practicable" during the 30-day period immediately following enactment. Yet, notwithstanding this language, the Senate floor statement would have you believe that the Administrator is under a nondiscretionary duty to apply the requirements of section 121 during this 30-day period. This is nonsense. The requirements of section 121 only apply "to the maximum extent practicable" during this period.

What makes the Senate statement even more egregious is that the Senate staff had argued long and hard during the conference that the requirements of section 121 should apply without qualification during this period. They lost this battle. The conferees rejected their arguments and agreed to a 30-day window. Yet it is apparent that the Senate staff did not feel constrained by the decision of the conferees and succeeded in getting language in a floor statement which tries to undo this decision. I am sure that EPA and the courts will pay little attention to this blatant attempt to accomplish in a floor statement what could not be accomplished in conference.

I am not going to take the time of the House to rebut each and every statement of the other body. I will assume that the courts will see through the transparent ploy of the other body.

At this point, let me proceed with a discussion of some of the major provisions in the conference report.

I would like to start with one of the most important sections of the bill—section 121. This section provides a comprehensive approach to remedy selection at Superfund sites. As one of the two House conferees assigned to a subconference to work out the differences between the House and Senate versions of section 121, I feel especially well qualified to comment on this provision.

Section 121 accommodates congressional desire for more permanent, effective remedies at sites, while maintaining the EPA Administrator's flexibility to select the more appropriate remedy at a specific site. The section outlines four basic requirements in selecting remedial actions at Superfund sites. The remedial action must:

Protect human health and the environment;

Be cost effective;

Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

Meet applicable and relevant or appropriate standards, requirements, criteria, or guidance under Federal or State environmental laws.

The language expresses a strong preference for the permanent reduction of the mobility, toxicity, or volume of hazardous substances through the use of treatment.

In making remedy selection decisions at a specific site, the Administrator should, at a minimum, evaluate the various alternatives on the following factors: cost, reliability and long-term effectiveness, residual public health risk, ability to implement, and short-term impacts.

Section 121(d) establishes the baseline level of protection for all remedial action selected or approved under Superfund. Any standard, requirement, criteria, or limitation under Federal environmental statutes or any more stringent State standard, requirement, criteria, or limitation which was duly promulgated pursuant to State law, must be met at Superfund cleanups if such requirement is legally applicable or relevant and appropriate under the specific circumstances of the release. The Administrator may waive those requirements if certain enumerated conditions are met.

Mr. Speaker, notwithstanding the statements made in the other body, the cleanup standards section of the bill preempts Federal and State cleanup standards and Federal and State permitting requirements under other Federal and State environmental laws. The laws themselves are preempted, but the Federal and State standards are to be applied through section 121. The waivers provided in section 121, particularly the fund-balancing waiver, show that the other Federal and State statutes cannot as a matter of law apply to these actions taken under CERCLA, but they serve rather as a source of standards to determine how clean the sites must be.

The ability to disregard State siting requirements in certain limited circumstances also shows that those State laws are to be used as a source for the remedy determinations under this law, but are in fact preempted by it. The provision for conducting onesite cleanups without permits is another example of how this statute preempts the others while utilizing them to help determine the extent of the cleanup under this statute.

Finally, subsection (d) requires the Administrator to meet the requirements of State facility siting laws, except where they could effectively result in the statewide prohibition of land disposal. Any substantive objective criteria of State siting laws should be applied to Superfund cleanups in the context of the remedial investigation/feasibility study and does not require a siting board review or other administrative process.

This section also provides for the selection of more permanent remedies. It expresses a strong preference for remedial action in which a principal element is the permanent and significant reduction of the volume, toxicity, or mobility of the hazardous substances. It requires the utilization of permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. These requirements are not to be taken lightly; in the future, remedies will be more permanent. However, this language should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site.

This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies should be selected to the maximum extent practicable. In determining whether these remedies are practicable, the Administrator may take into account technical feasibility, cost, State and public acceptance of the remedy, and other appropriate criteria of practicability.

In conclusion, let me emphasize that although this section sets forth strict requirements, it does not direct the selection of foolish, costly remedies where alternative cost-effective remedies provide comprehensive protection of public health and the environment. As long as cleanup officials have adequate flexibility to use their professional judgment, this section represents a significant improvement over the 1980 Superfund law, which contained no cleanup standards.

The bill also makes important changes to strengthen health-related authorities and encourage research, development and training in hazardous waste management. The Agency for Toxic Substance and Disease Registry must prepare toxicological profiles on chemicals commonly found at Superfund sites and research the effects of exposure to each such chemical. The new law also calls for health assessments at every cleanup site. In addition, the bill provides a new program of research into the safe storage, transport and destruction of hazardous wastes and establishes university hazardous substance research centers to utilize the talents and resources of our Nation's academic institutions. H.R. 2005 also provides for a workers training program to ensure the safety of workers and surrounding communities.

Provisions regarding settlements and response action contractor are among the bill's most valuable contributions. Unlimited, retroactive liability under Superfund has led to a litigation explosion and, in turn, a liability insurance crisis. The settlements and cleanup contractor sections are positive steps toward the goals of less litigation, more available insurance, and faster, more effective cleanups.

For the first time, EPA is expressly authorized to enter into cleanup settlements allowing potentially responsible parties to conduct cleanups. All settlements become embodied in consent decrees entered before Federal courts where interested parties have the opportunity to review and comment on the final cleanup plans. EPA is also directed to seek separate settlements with small—de minimis—contributors. EPA's negotiation procedure, which includes enforcement moratoria and nonbinding allocations of responsibility, will minimize unnecessary litigation, facilitate negotiations and expedite cleanup.

The bill establishes a Federal standards of negligence for Superfund cleanup contractors. In other words, cleanup contractors are exempt from liability under Federal law unless they are negligent, grossly negligent, or engage in international misconduct. In addition, EPA may indemnify contractors for negligent acts if the contractor cannot obtain adequate insurance or indemnification from the responsible party. These important changes to Superfund's current liability scheme should help to make insurance available again, so that contractors can return to the business of cleaning up sites.

H.R. 2005 makes additional revisions to the Superfund liability scheme in other areas to promote fairness and wise environmental policy. "Innocent" landowners who unknowingly acquired contaminated property now have an affirmative defense to Superfund liability. Methane gas recovery operators receive special treatment as well, in recognition of their important work, which the current liability scheme often discourages. Service stations dealers who recycle used oil now have a similar exemption from the potential imposition of strict, joint and several liability under Superfund. This important change will clearly benefit the environment by creating incentives for oil recyclers and by discouraging "do-it-yourselfers" from disposing of oil improperly.

H.R. 2005 makes another improvement to current law by recognizing the unique features of special study wastes, such as fly ash. The Administrator must revise the hazard ranking system as it applies to facilities that contain substantial volumes of fly ash and other waste discussed in section 3001(b)(3)(A) of the Solid Waste Disposal Act that relate to the combustion of coal or other fossil fuels so that such facilities receive appropriate consideration of their site-specific characteristics. The provision improves current law by requiring EPA to focus on the concentration of hazardous constituents in—rather than the sheer volume of—fly ash when adding sites to the national priority list.

Despite these improvements, however, H.R. 2005 has some provisions which cause serious concern. For example, the funding provisions will result in a more than 500-percent increase in the amount of Federal tax revenues being dedicated to the Superfund program. The 1980 statute authorized $1.6 billion for 5 years; in stark contrast, H.R. 2005 authorizes $8.5 billion over the same period of time plus an additional $500 million for leaking underground storage tanks. This represents a quantum jump and is $3.5 billion more than the $5 billion level requested by the President. Because of technical and resource constraints at EPA, the extra $3.5 billion probably will not achieve more clean ups. Instead, as the agency itself recognizes, we may be merely throwing more money at the hazardous waste problem without increased benefits to the environment.

Another problematic area involves citizen suits and legally enforceable schedules and requirements built into the statute. Fortunately, the conferees deleted the so-called "third leg" of the House's citizen suit provisions which created an action for "imminent and substantial endangerment." This change will help to return the implementation and enforcement of Superfund to EPA and other appropriate agencies rather than the courts without depriving citizens of their right to sue polluters under other statutes.

Experience with other environmental laws such as the Clean Water Act has painfully shown that mandatory schedules, if unrealistic, only delay clean ups as more and more of the Agency's responses are spent defending lawsuits rather than doing clean up and enforcement work. Fortunately, the conferees substantially revised the unrealistic schedules contained in earlier versions of the House-passed bill. In the conference compromise, EPA must ensure that clean up begins at no fewer than 375 sites during the next 5 years. Other provisions set binding timetables for initiation of cleanup planning studies.

Even with the revised schedules, however, I am concerned that the bill's legally enforceable requirements, coupled with citizen suit provisions, will ultimately harm the Superfund Program. The cumulative load of deadlines throughout the bill may "set up" EPA, States, and others for failure which will, in turn, breed endless litigation and disrespect for the law. We must avoid imposing unrealistic requirements that result in courts—rather than EPA—running the Superfund Program. I hope, Mr. Speaker, this new bill will not set up an unhealthy spiral of missed deadlines, lawsuits, congressional distrust, more deadlines, more missed deadlines, more lawsuits, ad infinitum. If it does, then Congress should expect to revisit the whole issue again very soon.

Another troublesome area of the bill relates to the savings clause in title I of the Marine Protection, Research, and Sanctuaries Act, the Ocean Dumping Act. Section 127 provides a narrow amendment to section 106 of the Ocean Dumping Act, but in doing so does not completely overturn *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, —— U.S.—— (1981). In Sea Clammers, the Supreme Court held that the comprehensive regulatory scheme of the Ocean Dumping Act preempted Federal common law nuisance actions seeking abatement of or damages for ocean dumping. Just as importantly, however, the court ruled that the Ocean Dumping Act and the Clean Water Act, which expressly authorize citizen suits for statutory violations, do not implicity create any right of action for private parties to seek money damages. This amendment does not in any way disturb the latter holding.

Nor does the amendment affect the well-established rulings of Milwaukee I, II, and III involving the Clean Water Act. Taken together, these decisions hold that in interstate water pollution disputes a downstream plaintiff State may not apply Federal common law, nor the State common or statutory law of the downstream State against an upstream State with EPA-approved water pollution control requirements. In Milwaukee II, the Supreme Court held that the "all encompassing program of water pollution regulation" under the Clean Water Act preempted the Federal common law of nuisance. Section 127 does not in any way overturn this wise decision. Interstate water pollution should be and will remain to be the subject of uniform Federal law and not the conflicting laws of various States.

In summary, section 127's amendments to the Ocean Dumping Act are narrow in scope, leaving intact much of Sea Clammers and all of Milwaukee I, II, III. To suggest that an amendment in the superfund bill implicitly extends to the Clean Water Act is not only implausible, but clearly beyond the specific intentions of the conferees. The conferees leave undisturbed the well-established principles of the Milwaukee cases. To do otherwise would be to distort completely the congressional purpose underlying the Clean Water Act. As stated by the Supreme Court:

> Congress has not left the formulation of appropriate federal standards to the courts through application of often vague and indeterminate nuisance concepts and maxims of equity jurisprudence, but rather has occupied the field through the establishment of a comprehensive regulatory program supervised by an expert administrative agency.

City of Milwaukee v. *Illinois*, 451 U.S. 304, —— (1981). Today Congress leaves this comprehensive regulatory mechanism intact and does not in any way imply that Federal common law remedies are available to supplant or supplement remedies already available under the Clean Water Act.

The community right-to-know provisions also cause me a great deal of concern. In fact, I was so concerned that I refused to sign the portion of the conference report related to community right-to-know. I fully recognize the importance of and need for a comprehensive program to provide communities and emergency response personnel with detailed information about chemical threats. Clearly, citizens and responsible health officials have a basic right to know about the presence and characteristics of chemicals within their community and regulatory jurisdiction. Just as important, however, is the need to establish a reasonable and workable program that does not create a massive and unnecessary flow of paper. Thus, I am pleased that the conferees clarified the vague language added on the House floor which established burdensome reporting requirements for emissions of chemicals presenting "chronic" hazards to health.

Despite this and other improvements to the House and Senate passed bills, I have some major concerns, however, about other provisions in the community right-to-know title of the final conference report. Title III of H.R. 2005 calls for a complex array of new and potentially overlapping reporting requirements. In our effort to include provisions of both bills, we may have created an unworkable compromise. Certain facilities will have to file at least three kinds of reports for use by fire departments, local emergency planning committees, State emergency response commissions, environmental agency personnel, and the public. Despite our good intentions, we may have established a program with so many different lists of chemicals and reporting requirements that it collapses from its own weight.

In order to give my colleagues a better idea of why I am so concerned about the community right-to-know title, I would like to pose a series of "questions" and "answers" to help clarify the issues.

Question. With respect to emergency planning, is it true that we require the local emergency planning committees to prepare comprehensive emergency evacuation plans for the so-called CEPP list of 401 chemicals, as well as any chemicals that EPA may add to the list on the basis of the criteria set forth in the bill? Is it true that this requirement applies to all businesses, regardless of size, that have more than the threshold planning quantities of these chemicals?

Answer. The answer to each of these questions is "yes".

Question. Now, with respect to emergency notification, is it true that we require that the local committees be notified of any reportable releases of the cercia hazardous substances (roughly 700 chemicals) as well as the 401 CEPP chemicals? Is it true that this requirement also applies to all businesses, regardless of size? Is it true that the local committees must also be supplied with followup emergency notice for each reportable release?

Answer. The answer to each of these questions is "yes".

Question. With respect to the MSDS requirements, is it true that the MSDS requirements apply to any facility which is required under OSHA regulations to prepare or have available to MSDS, and that it is estimated that some 50,000 to 60,000 substances might be covered? Is it true that we require that the local committee be supplied with either a copy of the MSDS for each chemical or a list of the chemicals? Is it true that some plants may have, on the average, up to several thousand MSDS's? And is it also true that, in some instances, other types of facilities may have up to 40,000 or more MSDS's Is it true that as a practical matter many of these MSDS's would be submitted to the local committee if requested by any citizen, even if that person happens to work for a competitor?

Answer. The answer to each of these questions is "yes".

Question. With respect to the emergency and hazardous chemical inventory form, is it true that any facility to which the MSDS requirements apply must also provide so-called Tier I aggregate information by OSHA categories for all of these chemicals? Is it true that the facility, if requested by a member of the public, for whatever reason, must provide the more specific Tier II information on a chemical-by-chemical basis for any hazardous chemical stored at the facility in excess of 10,000 pounds? Is it true that the more specific Tier II information must also be provided for hazardous chemicals stored in amounts less than 10,000 pounds if requested by the local committee (either on its own initiative or in exercising its discretion to honor requests from the public)?

Answer. The answer to each of these questions is "yes".

Question. Now, with respect to the toxic chemical release form or the so-called emissions inventory, is it true that we also require certain facilities to supply emissions inventory data on "toxic chemicals"?

Answer. The answer to this question is "yes".

Question. Is it true that the list of chemicals for emergency planning, and the list of chemicals for emergency notification, and the chemicals subject to the MSDS requirements, and the list of chemicals for the emissions inventory are all different?

Answer. The answer to this question is "yes".

Question. Is it true that the state and/or the local committee must make all the emergency plans, all of the followup emergency notices, all of the MSDS's which are submitted, all of the Tier II inventory forms which are submitted, and all of the emissions inventory forms available to the public during normal working hours?

Answer. The answer to this question is "yes".

Question. Do we give the states and local committees any resources to help carry out these requirements?

Answer. The answer to this question is "yes".

In summary, Mr. Speaker, I have reservations about certain aspects of H.R. 2005, but support the bill as a whole. Notwithstanding all of its shortcomings, the legislation does have considerable potential, if everybody can resist the temptation to politicize the situation. This has clearly been a politically and emotionally charged bill. Rather than concentrating on drafting something that is good and makes sense, everyone is afraid of how it will be perceived by this segment or that segment of our society.

Since I will be retiring at the end of this Congress, I will not have to face the issues surrounding the Superfund Program and the impact this legislation will have. I must, however, express as strongly as I can my belief that we should stop playing politics with this program. We need to stop using EPA as a whipping boy and start helping that agency administer the program as best as we can.

Quite frankly, we need to deal with the toxic waste cleanup issue with more professionalism and less hysteria and political opportunism, so that we can produce a really effective cleanup program.

I know that my colleagues in this body have the capacity to act in the interest of a strong and workable Superfund Program. My hope is that those of you in this and succeeding Congresses will have the will to do so as well.

Mr. Speaker, I urge my colleagues to vote for H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

Mr. Speaker, the gentleman from Ohio [Mr. ECKART] participated in the subconference on cleanup standards, and I would like to engage in a short colloquy with him.

Mr. Speaker, when the Administrator of EPA cleans up a site in accordance with the requirements of section 121, may a State then seek to impose additional or more stringent State standards in a State court action, independent of section 121?

Mr. ECKART of Ohio. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Speaker, first I would like to thank the gentleman for his contributions to this conference report, and say that long after his physical presence is gone from here, we will remember his contributions on this bill.

Mr. Speaker, the answer to the gentleman's question is no. When a site is cleaned up in accordance with section 121, including requirements relating to State involvement, a State may not then bring a separate action in State court to impose additional or more stringent State standards. Of course, the requirement of the Solid Waste Disposal Act, as provided in section 120(i) continue to fully apply to any department, agency, or instrumentality of the United States.

Mr. SNYDER. I thank the gentleman.

Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. SNYDER] has 9½ minutes remaining.

Mr. SNYDER. Mr Speaker, I ask unanimous consent that I may yield the balance of my time to the gentleman from New York [Mr. LENT], under the same conditions that are now existing, and that he may yield time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

Mr CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. DELAY].

(Mr. DELAY asked and was given permission to revise and extend his remarks, and include extraneous material.)

□ 1540

Mr. DELAY. Mr. Speaker, I rise in strong opposition to the Superfund conference report, notwithstanding the very hard work that the conferees had to go through to bring this bill to the floor. And I am not rising in opposition to toxic waste cleanup.

The intention of the Superfund Program was to clean up hazardous waste sites to protect dangers to the public health. In my district in the Houston area are a number of hazardous sites, some of which need immediate attention. In the Pearland, TX area there are a number of homes that were built in radioactive fill dirt that inadvertently came from a contaminated chemical plant. The people who are effected are very concerned about the health effects to their families, and I am very concerned. I understand that EPA will step in just as soon as they have some money.

The urgency of these kinds of problems, however, are no excuse for passing this awful bill.

Mr. Speaker, this legislation is doomed to produce disaster. This bill has boondoggle written all over it. If this bill is enacted into law, we will look back 5 years from now and wonder whatever happened to our intentions.

I would rather call this the Colossal Fund than the Superfund because we have gone way beyond the scope of what the Superfund was intended to do. We will have spent 5 years from now more than $8 billion, an absolutely huge sum of money, and found that it was largely wasted. There will be a greater hue and cry for even more money because in the absence of good policy the only thing this Congress can do is throw money at the problem, our people's money, that is.

Why does this bill call for spending more than $8 billion? Because that is every penny that the environmentalists could get. They would have gone for $20 billion if they thought they could get it.

But it is the EPA that will have to administer the spending of this money; yet they have repeatedly told us that the maximum that they could spend effectively is a little over $5 billion. Any more and it will be wasted.

Why are we ignoring this warning? Are we doing it to demonstrate our no-holds barred commitment to cleaning up toxic waste? It looks more like to me that we are demonstrating our no-holds barred commitment to throwing good money down the drain, but we hardly need another demonstration of that here in this Congress.

Mr. Speaker, this bill makes promises that everyone involved knows are impossible and unrealistic. We have provided a cleanup schedule that cannot be met. That schedule will push EPA to clean up the easiest and least hazardous sites, leaving the largest dangers still in place. This bill forces EPA to spend large amounts of money right now to meet cleanup standards which go far beyond the goals of protecting the public health and safety.

In the near future, we can expect to have new technologies which will make these full cleanups much less expensive. Biotechnology, for instance, is now beginning to give us microbes which can eat hazardous chemicals right up. I have a company in my district that is developing biotechnologies to eat PCB's that right now would cut the cost of cleanup of PCB's to one-third.

But do we take this into consideration? No.

Why are we trying to force EPA to spend all of this money now when we do not even have the technology to do the job right? We should be trying to protect the immediate dangers to the public and developing the technology and the techniques to handle the long-term problems. We cannot just pretend that the goals set forth in this bill can be met and close our eyes to the reality.

So how are we going to pay for all of this? Well, Mr. Speaker, we are going to fund this greatly expanded program by making a lot of people pay for cleaning up messes for which they had absolutely no responsibility. We do this by making companies with deep pockets pay for cleaning up a mess in which they had only the slightest involvement.

We are going to tax companies which do not produce hazardous waste. We are going to greatly tax companies which are already responsible for paying for the messes that they did cause.

We are doing all of this to take care of what we all admit is a societal problem. Hazardous waste is a byproduct of our modern society. When we look to the Federal Government to solve this problem, we as a society are saying that we have a problem which affects all of us and, therefore, all of us should pay for the solution.

Some have said that the idea of Superfund is for the polluters to pay. But Superfund is only ultimately taxed to pay when you cannot find the polluter or the polluter does not have any money. To make someone else pay for it undermines the concepts of justice and equity on which our Nation is founded. The only way to ensure that justice is to pay for this program out of general revenues. Since we do not have any extra general revenues to pay for this new program, then what do we do? I say that we pick our priorities.

If the Superfund is more important than the revenue foregone subsidy to the Post Office, then substitute that money. If the Superfund is more important than subsidizing passenger railroads, then let us use the $600 million from Amtrak.

The point here is that we have not tried to do this kind of prioritizing. We just decided that this progam is so important that we will invent a new tax and greatly expand old taxes that have absolutely nothing to do with hazardous dump sites.

Here we are expanding the oil tax thirteenfold as if that had anything to do with chemical dumps.

Mr. Speaker, we need to give EPA an extension and completely rethink our approach to cleaning up our hazardous wastes. This bill, Mr. Speaker, allows an aggrieved party to sue the Government for failure to perform mandatory duties under Superfund, Colossal Fund, and to bring suit against any person for violating the law's requirements.

It also establishes the comprehensive emergency response, and more importantly a community right-to-know program, and establishes a program for cleanup of hazardous substances for Federal sites.

Mr. Speaker, this bill is full employment for lawyers and full employment and expansion of the fundraising capabilities of the environmental organizations. I urge the Members to reject this conference report.

SUPERFUND: A HAZARDOUS WASTE OF TAXPAYER MONEY

(By Fred L. Smith, Jr.)

House and Senate conferees are nearing agreement on an $8.5-billion, five-year reauthorization of the Superfund law (the Comprehensive Environmental Response, Compensation and Liability Act of 1980). Such a massive expansion of federal toxic waste cleanup efforts promises to unleash the largest pork barrel program in history, expend great sums to little result, and preempt more effective solutions to the problems posed by abandoned chemical dumps.

If this bill is enacted, the Reagan Administration will largely be to blame. The Environmental Protection Agency (EPA) and the While House have been remarkably feeble in challenging the hysterical zero-risk, antibusiness, technology-fearing advocates of this legislation. Instead, they have retreated into a defensive shell. Rather than opposing the waste cleanup legislation as bad environmental policy—regardless of its pricetag — White House officials have argued for a lower reauthorization increase (from the current $1.6 to $5.3 rather than $8.5 billion) and have quibbled over the proposal to finance Superfund with a new, broad-based business tax.

In addition, the Administration has provided conflicting signals to Congress—threatening a veto if the funding level, tax problems and liability rules aren't corrected, while simultaneously allowing EPA to send Congress a threatening letter of the "We're going to close the Washington Monument" variety unless new legislation is soon enacted. Its inconsistencies and failure to challenge the overall program have once again made it easy to caricature the Administration as an anti-environmental, pro-business penny-pincher standing in the way of congressional defenders of American health and safety.

Enactment of this bill would provide dramatic evidence of the failure of the Administration to develop any coherent approach to environmental policy.

As detailed below, the Administration knows full well that:

(1) Superfund stems from a total misreading of the Love Canal incident (a situation where private protections were thwarted by public mismanagement),

(2) The magnitude of health risks addressed by Superfund are small to nonexistent,

(3) The legislation contains few features designed to target funds to the more significant cleanup sites,

(4) The liability provisions encourage a "no-fault" concept that undermines the basic principle that polluters—not the innocent taxpayer—should pay pollution costs,

(5) The new taxes embodied in this bill constitute a serious threat to the business community, and

(6) The bill will preempt far more effective solutions to the problems posed by hazardous wastes.

For these reasons, the Administration should veto the proposed Superfund reauthorization bill, accept a short-term interim extension of the program, and seek aggressively to reframe the Superfund debate in the 100th Congress. Environmental policy is far too important to be transformed into another public works boondoggle.

ORIGINS OF SUPERFUND: LOVE CANAL 'DISASTER'

Superfund from its beginnings has been little more than a Superfraud. Launched in 1980 as a hastily concocted response to the Love Canal incident, the program is founded upon erroneous assumptions about the cause and nature of the hazardous waste threat.

Love Canal was an area near Buffalo in which the Hooker Chemical Co. had once discarded toxic chemical wastes. As chemical substances from the waste disposal site began to leach into the water table and infiltrate the soil in the surrounding residential community, the national media learned of the event and the "Love Canal Disaster" was born.

The EPA leadership seized upon this incident to garner political support for their then-languishing Superfund legislative proposal. EPA contracted for a "quickie" medical survey which appeared to show increased health risks for Love Canal residents and released these results at an "emergency" press conference covered by all the major television networks.

Americans were bombarded with powerful media images of oozing, noxious chemicals juxtaposed with nervous, concerned families. Love Canal and "chemical threats to your health" became national concerns and Superfund was approved by Congress.

Morever, Hooker Chemical seemed the perfect corporate villain, with its "no comment" response to the adverse publicity. Once more (so it appeared), a private firm motivated only by short-term profits had sought to economize by dumping deadly waste on an innocent and unsuspecting citizenry. The market having failed, so went the argument, the Superfund Act should be implemented as swiftly as possible.

As detailed in an investigative story by the Reason Foundation ("Love Canal: The Truth Seeps Out"), and, as was known at the time to EPA, Hooker Chemical had no direct control, or responsibility for the incident. In 1953, Hooker was forced, under threat of eminent domain, to deed over the site to the local school board, which wanted the land for a new school.

Hooker protested the land transfer. It argued that a hazardous waste disposal site was no place for a school. The company gave way only after further pressure from local officials and acknowledgment in the deed transfer document that the school board had been warned of the chemical wastes buried on the site.

At the time of the transfer, Hooker had taken considerable care in disposing of its waste materials. The company placed them in a clay-lined trench (the former canal) which was then capped with an additional four feet of clay. Today, such a landfill would probably receive EPA operating approval. Hooker undertook such relatively expensive precautions because, as a private property owner, it feared eventual damage claims if its waste ever came into contact with third parties.

This, private ownership of a potential hazard in a litigious society seemed to perform exactly as we might hope—a private party acted in a publicly responsible manner to protect its own self-interest.

On the other hand, the local school board politicos of Niagara Falls—as "public servants"—had few concerns about being sued and thus felt free to ignore any problems their carelessness might create.

Thus, the board began its school, but soon found that declining school populations required less land than originally anticipated. Acting more like stereotypical rapacious capitalists than disinterested public servants, the board then sought to sell the remaining land (including the dump site itself) to a residential developer. Despite Hooker's repeated warnings that the site contained potentially life-threatening materials and should not be used for residential housing, the board eventually found a local realtor unaware of the controversy and swiftly transferred the hot potato to him.

Unlike Hooker, neither the school board nor the unaware new owner concerned himself with preserving the integrity of the landfill. Much of the clay cap was scrapped away, at first during construction of the school and then again for a housing development. Sewers and roads to serve the latter were allowed to be built through the site itself.

All these activities eventually combined to allow the buried hazardous materials to leach from the disposal site into the surrounding water table, thereby triggering the Love Canal "disaster" story.

The real facts of Love Canal contradict the "evil capitalist" myth. When a private company (Hooker) owned the property, it was seriously concerned about the long-term consequences of its activities, and justifiably so, since it expected to be around for many decades and was fully aware of potential legal claims that could be brought against the firm.

On the other hand, political officials obsessed with the short run (holding down tax assessments) and having little concern over possible financial liability proved irresponsible guardians of public safety.

The neglected lesson of Love Canal is that it actually showed how private property rights encourage consideration of low-probability, long-range risks. But the "conclusions" promoted by Superfund advocates and the national media were that the free market had failed to handle the hazardous waste threat and a major new federal program was essential.

THE HEALTH HOAX

Love Canal convinced Americans that hazardous waste dumps posed a serious health risk and required an immediate, emergency response. Yet followup studies at Love Canal turned up no evidence of abnormal levels of morbidity or mortality.

For example, a distinguished panel of scientists appointed by New York Gov. Hugh Carey reported in October 1980 that "there has been no demonstration of acute health effects linked to exposure to hazardous wastes at the Love Canal site. The panel has also concluded that chronic effects of hazardous waste exposure at Love Canal have neither been established nor ruled out yet."

A study by the New York State Department of Health published in the journal *Science* in June 1981 concluded: "Data from the New York Cancer Registry show no evidence for higher cancer rates associated with residence near the Love Canal toxic waste burial site in comparison with the entire state outside of New York City."

In June 1983, the Center for Disease Control (CDC) noted no excess illness among persons living close to the Love Canal. Another CDC report in March 1984 found "no increase in the frequency of chromosomal abnormalities . . . of residents in the Love Canal areas."

The hysteria and political pressures that have led to the rapid expansion of Superfund reflect an extremely successful effort to repackage a traditional pork barrel program as a human health and cancer prevention measure.

Superfund defenders have convinced a lot of Americans that we are dealing with emergency situations and any effort to correct the program's problems will intolerably slow down urgent cleanup efforts. Unfortunately, such voodoo environmentalism remains largely unchallenged.

For many hundreds of years, mankind has produced waste materials that, if improperly handled, could create health problems and reduce the quality of the environment. The early dye works involved noxious chemicals, as did the alchemist shops of the Middle Ages. Superfund is predicated on the belief that this hazardous waste problem has reached crisis proportions and now poses an unusually severe risk to human health and the environment. The Superfund program embodies a sense of urgency in which normal requirements of proof and cost-benefit analysis are suspended. The house is on fire and there is no time for careful consideration.

Yet we really know little about the quality of underground water in the United States, and even less about the actual health hazards that might arise from toxic waste dumps. Six years after Love Canal, we still don't know which toxic materials in what doses are dangerous to human beings, nor whether these dosages are likely to occur given groundwater flows and normal countermeasures.

Evidence that hazardous materials in dump sites have migrated into groundwater and damaged human health has been difficult to produce. The original Superfund legislation charged the Department of Health and Human Services with investigating such toxic health hazards, but almost nothing has been done (in keeping with a long tradition of self-ignorance directing federal environmental policy).

The health threat of greatest salience in fueling reflexive support for Superfund is cancer, which accounts for about one-fourth of all deaths in the United States. But to the best estimates now available, lifestyle factors such as smoking, diet, and sunshine exposure account for the overwhelming portion of all cancer fatalities.

The small fraction of cancers attributable to man-made chemicals via all modes of exposure—both workplace and environmental—is perhaps 6 per cent. Since the levels of exposure are likely to be far higher in occupational settings, there is little evidence to date that environmental levels of contamination are at all linked to human cancer.

Even using a common estimate that about 1 per cent of all cancer can be traced to environmental pollution, one must recognize that such a figure includes pollution from airborne carcinogens, from surface contaminants, from food additives, from pesticide residuals, and other sources. Only a fraction of such risks can be associated with groundwater contamination. Superfund thus addresses a tiny speck of the cancer problem in the United States.

Moreover, there are no data that cancers caused by manmade substances are increasing. Epidemiological evidence, of course, cannot absolutely rule out the possibility of future risks from manmade substances; however, existing data coupled with the lack of any evidence of higher cancer incidence in Europe (where hazardous chemicals have a much longer history) suggest that any such risk is small. Indeed, growing research indicates that mankind actually lives, and has lived for thousands of years, in the midst of many natural carcinogenic materials. The argument that human beings are at risk primarily from novel, man-made chemicals (appealing to nostalgic fanciers of pre-industrial society) now appears to be dead wrong.

Since the human heath benefits from Superfund appear small, the case for a massive federal program in this area must rely on its value in protecting vital groundwater supplies. Certainly, some wastes are leaching into some aquifers which somewhat reduces their utility and such damages should be disciplined. However, here as elsewhere, data are extremely limited on the extent to which aquifers are actually threatened. There is certainly no evidence that hazardous wastes are a major or even significant threat in comparison to other factors endangering this vital resource; excessive depletion (allowing saltwater contamination, for example), government subsidized water supply (encouraging waste), government subsidized development (threatening water sheds), and the inefficient ownership rights which make it difficult for individuals to manage this resource privately.

Even in the area of contamination, the major health risk continues to be "natural" bacterial and viral contamination of water supplies, rather than chemical waste contamination. These risks are managed in a decentralized fashion, with each water supplier and each individual well user taking precaution directly. Nonetheless, there is no federal Sanitary Waste Superfund dedicated to digging up abandoned out-houses throughout the United States. (At least not yet.)

The health threat from hazardous waste sites addressed by Superfund appears small. What little we know suggests that any massive expansion of Superfund based on health reasons is unjustified.

HAZARDOUS WASTE CLEANUP: POLITICAL GROWTH INDUSTRY

Despite the deliberate misreading of the Love Canal incident and its human health consequences, Congress rapidly enacted the Superfund legislation to address "emergency" cleanup situations and orphan dumps and provided an initial funding of $1.6 billion. The program promised to make hazardous wastes "go away," at no cost to local communities. The federal government pays 90 per cent, and the state picks up the remaining expense. To the local citizenry, Superfund is a "free good" of all benefit and no burden. Naturally, the program has become extemely popular.

The number of sites "needing" attention has increased from the initial 400 priority sites (about one for every congressional district) to EPA's current estimate of 2,000 such locations. Superfund's sponsors further encouraged this feeding frenzy by avoiding any clear definition of starting or stopping rules in addressing risk management responsibilities, site selection, and determination of appropriate cleanup strategies.

The Superfund Act provides very little guidance on how serious threats are to be distinguished from mere nuisances. Under Superfund, hazards include any materials that are flammable (e.g. charcoal lighters), toxic (insecticides), corrosive (Clorox or Oven Off), or reactive (Drano)—or any substances that EPA designates as hazardous. Moreover, the legislation suggests and EPA has adopted a definition of "hazardous" that gives considerable weight to extremely unlikely situations. If something might happen, Superfund assumes it will happen. Under this worse case analysis, too many sites are classified as "hazardous" even though, as noted above, the evidence suggests that the overall human risk associated with all chemical wastes is low.

Since Superfund fails to target the most serious problems, EPA finds itself selecting projects based on their political and public relations value. In case after case, EPA had rushed to spend money for "cleanups" where the threat to health has been low to nonexistent or where responsibility could obviously be assigned. In Times Beach, Missouri, for example, EPA purchased all the homes in the area for $30 million on the basis of studies finding dioxin contamination of soil in the area. Experimental animal studies do show dioxin to be extremely toxic; however, as is often the case, animals respond differently from humans, and there is no evidence that any humans have ever suffered any chronic health problem from exposure to this substance. That finding is based on epidemiological studies of industrial accidents in which exposures have been many times those encountered at Times Beach. Elizabeth Whelan in her book Toxic Terrors noted, "Times Beach, like Love Canal, is an environmental problem turned into an environmental fiasco. Decisions and subsequent actions were based as much on political considerations as on public health realities." A recent Scientific American article on the dioxin scare noted:

"What the agency [EPA] has not done — and might be said to have a responsibility to do—is to try to dispel the public's fear on the basis of the evidence that exposure to low concentrations of TCDD (dioxin) in the environment appears not to have a serious chronic effect on human beings."

EPA might have taken such prudent actions, but given the value of scare tactics to an expanding Superfund budget, we can understand why it did not.

Superfund has also encouraged communities to seek federal funding rather than go after responsibile parties. After all, the program was originally intended to clean up a small number of "abandoned, orphan" sites. However, as the Love Canal incident indicates, EPA has made Superfund monies available whenever penalizing the real polluters (the public officials in that case) would be politically difficult. As a result, Superfund's "priority" list now includes a number of sites operated by viable companies and even by the Department of Defense.

The "worst case" criterion for risk assessment also encourages EPA to add low-risk sites to the Superfund program. James Bovard, an investigative journalist, identifies one site, an inactive city dump in Windom, Minnesota, that was closed in 1974. As one would expect, the wells on site were indeed contaminated, but Bovard notes that EPA found that off-site municipal and residential wells were not. Nonetheless, the site was added to the "priority" list. Bovard notes: "If finding of non-contamination justifies adding this site to the Superfund list, why wouldn't every past and present city dump in the U.S. be included?"

With so few restraints on spending, it is not surprising that the Administration's initial request for a threefold Superfund funding increase to $5.3 billion was dismissed out of hand by both houses of Congress as "too modest." Indeed, most believe even the $8.5 billion "compromise" now being considered will prove inadequate given the spending incentives now built into Superfund. A recent study by Putnam, Hayes & Bartlett estimates that total Superfund program costs could jump to as much as $81 billion. A 1985 Office of Technology Assessment study foresaw a "need" for over $100 billion to get the hazardous waste cleanup job done. But even this study admitted that increased spending might have little if any effect on the disposal of hazardous waste, because of bottlenecks in the supply of sufficiently trained technical personnel and a lack of rational standards for cleanups.

"Spending large sums before specific cleanup goals are set and before permanent cleanup technologies are available leads to a false sense of security, a potential for inconsistent cleanup nationwide, and makes little environmental sense," the report concluded.

FEEDING FUND'S APPETITE: SEARCH FOR DEEP POCKETS

Although the political popularity of Superfund has resulted in major pressures to increase funding, finding a way to finance such demands has delayed final congressional reauthorization of the program.

The initial funding sources for Superfund—taxes levied on the standard pariahs of American industry, the oil and chemical industries, and recoveries from "responsible parties," again largely oil and chemical companies—have been stressed by demands encouraged by this legislation. As a result, Congress has begun to consider new revenue sources.

Until recently, House conferees insisted upon increasing taxes on the oil and chemical industry while Senate conferees sought a broad-based tax on manufacturers, similar to a national value-added tax (VAT). Concern over the uncompetitive status of the financially strapped oil and chemical industries finally seems to have won out over the desire of many House members to bleed them dry. As a result, there is basic agreement upon using a broad-based business profits tax to supplement the existing oil and chemical tax.

But the inequity of the initial Superfund burden on the oil and chemical sector (why should anyone be singled out to address the problems of "orphan" dumps?) should not blind one to the equally inequitable decision to address pollution problems by taxing everybody from ice cream to furniture manufacturers. Two wrongs don't make a right and singling out any group of innocent parties and imposing on them the costs of cleaning up the pollution created by someone else is bad public policy.

Enactment of any new broad-based revenue measure, even on a limited basis, is akin to introducing a tactical nuclear weapon into a conventional war. Once unleashed, this seemingly "painless" taxation almost certainly will rapidly increase. It threatens uncontrollable escalation of the tax burden. Imagine the combination of Superfund's unquenchable thirst for popular pork barrel projects with such a renewable revenue resource—the fiscal equivalent of an out-of-control breeder reactor!

DEFINING "RESPONSIBILITY" IRRESPONSIBLY

Part of Superfund's cleanup expenses, of course, are supposed to be financed by those parties "responsible" for creating hazardous waste problems. The Superfund Act required EPA to identify such parties—no easy task in the case of what are after all supposed to be abandoned sites. But Superfund officials simply eliminated in practice any normal usage of the term "responsibility" for decisions as to who is to be held "responsible."

The program treats as a responsible party anyone who has any economic connection with the dumpsite. If a company is found to have deposited a single barrel of waste at a dumpsite, it can be held liable for all site cleanup costs. These rules make the jobs of EPA and Justice Department lawyers easier, at the sacrifice of fairness and efficiency.

In a recent hearing, an EPA enforcement lawyer noted that the legal responsibility standards now prevailing under Superfund have largely eliminated all arguments about guilt and innocence. The focus of attention is on who can pay.

A high-ranking EPA official recently admitted that the program was custom-made to go after big oil and chemical companies. Superfund's loose interpretation of joint and several liability makes it all too easy and all too tempting to prosecute wealthier firms, rather than the most responsible parties. But trying to impose legal responsibility on parties who feel they have done nothing wrong can create costs of its own—resistance in the form of lengthy litigation which delays actual cleanup operations and may actually exceed the latter's cost.

In practice, Superfund's liability rules make every party involved with hazardous wastes—the original source, the transporter, the site operator—potentially liable. Spreading the blame over such a wide range of individual parties not only diffuses responsibility, it also undermines safety incentives. After all, if individual actions can do little to reduce liability, there is little reason to adopt risk reduction measures. Why bother if your ultimate responsibility is determined largely by the acts of others outside your control?

Superfund abandons the "Polluter Pays" principle (the costs of pollution should be borne by the polluter) in favor of a "Deep Pocket" theory of justice. This approach may make it easier to recover revenues in the short run. But the move toward a "no-fault" pollution policy drastically weakens incentives for individual parties to adopt less polluting policies over time. Profitable "tax" policy isn't good environmental policy.

INSURERS: BEWARE

The heavy legal club created by Superfund may well put the fear of God into accused parties, but it almost certainly causes more harm than good. The unlimited liability that might fall upon anyone associated with a waste site has seriously damaged the insurance market for hazardous waste manufacturers, transporters and disposers. In the late 1970s, several private companies had sprung up to provide such parties with liability insurance coverage, and to encourage more effective hazardous waste management techniques. But with the onset of Superfund's megaliability threat, the insurers ran to the hills.

If the private insurance business for these risks had been allowed to develop, we would have seen far more progress in procedures to gauge the risk of various waste-handling techniques. Private insurers would have had every incentive to spend the money to find out exactly what the dangers were. Their efforts would have nicely supplemented EPA's work. Thanks to the revenue-hungry, joint-and-several-liability approach of Superfund, we wind up with neither private insurance nor the market-based regulation that it could provide.

NOTHING NEW UNDER THE GROUND

Instead of cleaning up hazardous waste, and protecting groundwater, Superfund remains more likely to produce financial waste. Its parallels to the Clean Water Act fiasco are alarming.

In 1972, Congress responded to the public outcry over fish kills and flaming rivers by expanding the Clean Water Act of 1963. It set such new goals as making all U.S. surface water "fishable and swimmable" by 1983, and requiring all firms and municipalities to achieve "zero discharge" by 1985.

Congress voted to cover 75 per cent of the capital construction costs for municipal waste treatment facilities. This encouraged thousands of communities to construct new and expanded sewage treatment plants. As a result, total wastewater spending by all levels of government exceeded $100 billion from 1972 to 1983.

Unfortunately, the Construction Grants Program under the amended Act proved to be highly inefficient and expensive. With little money of their own at stake, local politicians often elected to spend the federal largess to achieve local pork barrel benefits at the cost of real environmental improvements. Despite the massive governmental investment, overall national water quality has changed little since 1972.

A 1981 investigative series by the Washington *Post* ("Dirty Water: A Federal Failure") observed: "Elaborate hunks of expensive and failing machinery litter the American landscape—the wreckage of Washington's good intentions." It continued: "After nine years of massive federal investment to build or upgrade sewage treatment works in 18,000 communities, about 2,000 of the projects have been completed, and most are small plants in small communities where pollution threats are often the least serious."

In some localities, federal funding simply replaced money the community had already been prepared to spend directly. Other communities chose to wait for their representatives to finagle federal financing, while deferring local efforts that would have resulted in earlier cleanups. Moreover, when the federal government paid, there was less concern about designing local solutions that worked. The *Post* review of the wastewater treatment program discovered that up to 91 per cent of the new plants "don't perform

up to antipollution requirements more than half the time."

Nonetheless, EPA and the environmental lobby kept pushing for more, more, more. Congress, driven by pork barral politics, was much more eager to award further sums of money than to evaluate what these funds might be achieving.

Finally, after 10 years of increasing scandals and failed plans, the Administration, the Congress, and even the environmental community came to their senses. Among the substantial changes made in the Clean Water Act were these key adjustments: the federal share of construction costs was dropped to 55 per cent and the range of eligible projects was reduced. It was recognized that local governments were far more likely to build appropriately sized and designed facilities if their own funds were at risk.

Indeed, in many ways, the design of Superfund is far inferior to the deeply flawed design of the Construction Grant Program. The latter, after all, required substantial local cost sharing (up to 25%) compared to a zero requirement under Superfund. Moreover, waste treatment plants engender some local opposition—they can create a local nuisance. In contrast, no one is likely to oppose a project to move a dump (hazardous or not) from his neighborhood. Moreover, the technology of waste water cleanup is far more developed and the ability to monitor what one has achieved far easier. The leakproof dump and the zero-pollution treatment facility have not yet been invented and it is extremely difficult to determine what is happening underground. In fact, Superfund overkill may actualy make the environment a more dangerous place. A "public health" program that begins by disturbing chemical graveyards raises serious questions. Extensive monitoring via test wells could create infiltration channels for groundwater contamination where none existed before. The movement of hazardous wastes is itself a hazardous activity, in may cases more risky than simply leaving the material where it was originally.

SUPERFUND NEEDS RETHINKING, NOT REAUTHORIZATION

The Supefund "debate" has barely moved beyond the proposition that hazardous wastes are potentially harmfull and therefore more federal spending is necessary. But Congress, having learned little from its past environmental policy failures, should not be allowed to write another blank check to pursue an undefined concept of cleanliness.

To sustain a veto of the reauthorization measure likely to come out of conference later this month, the Reagan Administration must seriously fight the Superfund steamroller on environmental, not just fiscal, grounds. It must make clear that although sharing the stated goals of Superfund's patrons, it finds serious problems in their means.

The Administration should express grave doubts about the benefits obtained from the $1.6 billion already expended, and assert that it sees no likelihood additional spending will be used more efficiently without major reform of the program's design flaws. At a minimum, it should insist upon higher local cost-sharing, more careful weighing of costs and benefits, and better targeted liability rules.

Tactically, the first step is to gain time to educate the public by substituting a short-term extension of Superfund (until the next Congress) in place of the sweeping five-year reauthorization. But if the Administration merely plays for time and exercises damage control with no large sense of purpose, it will have achieved little.

Strategically, the Administration must use the time wisely to come to grips with its greatest weakness in environmental policy—its failure to develop a market-oriented environmental policy. In the Superfund area, this means taking off the green eyeshades and arguing boldly for more imaginative, less intrusive alternatives to address the problems posed by hazardous dumps, primarily the protection of the nation's groundwater supplies. Developing an adequate strategy will take time; however, it would include reorganizing aquifer property rights, "labeling" of suspect site materials to ensure self-identifying of contamination, and reconsideration of other governmental policies (pricing, subsidies, conservation) which affect water quality.

More than five years into the "Reagan Revolution," it's time to stop running for cover on the environmental front and start taking the offensive.

Mr. Smith, who worked at the U.S. EPA for five years, now heads the Competitive Enterprise Institute, a pro-market public interest group. This article stems from research conducted under CEI's Free Market Environmental Program.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman from Kansas [Mr. GLICKMAN] is recognized for 7½ minutes on behalf of the Committee on the Judiciary.

Mr. GLICKMAN. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, there is a Kansas State expression which is "Ad astra per aspera," which means to the stars through difficulties, and I suppose that is an understatement from what we have done in this particular situation. We have reached the stars through the most incredible set of difficulties that I have ever experienced since I have been in Congress, and a lot of people deserve a great deal of credit, many of whom have been mentioned today. But I specifically want to refer to four of my colleagues. The two that deserve the greatest of praise are the gentleman from Michigan, JOHN DINGELL, and the gentleman from Ohio, Dennis Eckart. They were the most tenacious folks that I have ever met, and we would never have gotten a bill without them. Also the gentleman from New Jersey, Jim Florio, and my friend, the gentleman from New York, Norm Lent, as well as other people, and all of the committee that have been mentioned make this bill a possibility. We have a program now through which this country can vigorously move to clean up the hazardous waste sites that threaten our citizens' health and the Nation's environment. This program has a tough cleanup standard, has a strong community right-to-know, and with respect to the Judiciary Committee's functions under our jurisdiction, and Chairman Rodino, it establishes a fair and full right for both citizens and potentially responsible parties to participate in the selection of the best means to clean up a hazardous waste site. It gives citizens greater access to State courts if they suffer personal injury or illness because of their exposure to hazardous substances. The settlement and judicial review sections are contained in my statement in greater detail, but I think we have a program here that we can all support very, very strongly.

Mr. Speaker, as those of us who worked on the Superfund reauthorization for many months know only too well, it has been a long and difficult legislative process to complete our work. Many of the issues involved are very complex and it is with genuine satisfaction—and not a little relief—that we have now reached the end of our work and recommend to this House a strong Superfund Program through which this country can vigorously move to clean up the hazardous wastesites that threaten our citizens' health and the Nation's environment.

This Superfund reauthorization bill has tough new cleanup standards, and a strong community and right-to-know program. It establishes a fair and full right for both citizens and potentially responsible parties to participate in the selection of the best means to clean up a hazardous wastesite. It gives citizens greater access to State courts if they suffer personal injury or illness because of their exposure to hazardous substances.

Mr. Speaker, there is one particular aspect of this conference report on which I would particularly like to comment. This provision, section 119, "Response Action Contractors," addresses the critically important question of who will perform the actual cleanup work required by Superfund. I cannot overemphasize the importance of having qualified and responsible response action contractors who are able and willing to participate in Superfund work if the program is to achieve its paramount purpose of cleaning up hazardous wastesites.

Under CERCLA and the tort law developing in its wake, several types of parties associated with a wastesite may be strictly, jointly, and severally liable for cleanup costs or injuries alleged to be caused by the hazardous substances at the site. This liability attaches under CERCLA to site owner/operators, generators of waste, and transporters of waste, and may more boradly attach under tort law to any party who ever had anything to do with the site.

A wastesite cleanup is often a major construction project, and it is necessary to hire qualified cleanup contractors to perform this work. Because of the type of work involved, these contractors can be viewed as generators and/or transporters of waste and/or operators at a site. Accordingly, with "strict, joint, and several liability," they could be held liable for future site cleanup costs and/or alleged personal injuries from the site, even though they performed a cleanup with all due care and fully in accordance with Government standards and regulations.

The effect of this is to place the cleanup contractors, who had no responsibility for creating the site in the first place, under the same strict, joint and several liability regime as those who did. Because of the potential for skyrocketing future cleanup costs and jury awards, and because such liability has become uninsurable, responsible firms have naturally been deterred from engaging in cleanup work.

The conference agreement provides a partial remedy by two principal means. First, the conference language provides a specific Federal statutory negligence standard to govern the liability of response action contractors. This liability standard would apply only to response action contractors and would not affect the liability of any other party involved at the particular waste site. This standard will assure response action contractors that their liability would be based only on fault, either under the Superfund statute or any other Federal law.

Second, EPA is provided with discretionary authority to offer indemnification to cover liability based on negligence. The EPA Administrator is expected to provide for a limited indemnification in circumstances where adequate and reasonably priced insurance is not available at the time the response action contract is executed.

In the respective versions of the legislation passed by the House and the Senate, response action contractors were provided with additional protection beyond this. The Senate provided for indemnification to cover any claims arising under this standard, including those made under State law which would be based on a State strict, joint and several liability standard. The House would have applied the negligence standard for response action contractors at the Federal, State, and local levels. Concerted efforts of the conferees to fashion a compromise between these two different approaches resulted in a conference agreement which does not address strict liability under State law.

The conferees all recognized, however, that it would be incumbent upon the individual States to address the liability concerns of response action contractors in much the same way as Congress has done in the Superfund reauthorization. Therefore, the conferees decided not to address concerns about strict, joint and several liability being imposed on response action contractors under State law, with the expectation that each of the States should review its laws and judicial decisions with regard to their possible effects on the liability of response action contractors. This review should be undertaken by the States with a view to assuring that such contractors are fully encouraged to participate in cleanup activities within that State. Further, if necessary and appropriate, the State legislatures should enact legislation to protect response action contractors from the possible imposition of strict, joint and several liability under State law. Such legislation could address the matter either by establishing a specific negligence standard for response action contractors, as the conference agreement does with regard to Federal law, or by creating a State indemnity program. Other avenues may also be available to achieve the same purpose.

In sum, Mr. Speaker, the provision dealing with response action contractors in the conference agreement is responsive to the recognized needs of cleanup contractors, and goes as far as the conferees deemed appropriate. The conferees have decided not to preempt State law on this issue, nor to subject the trust fund to indemnities for the consequences of application of State strict liability standards. Rather, the judgment of the conferees was to leave it to each State to make whatever adjustments are necessary to insure the participation of qualified and responsible response action contractors in the cleanup of Superfund sites within each State.

Finally, Mr. Speaker, I want to thank all of those who worked so diligently on the entire Superfund conference, particularly my colleagues on the Judiciary Committee, who worked to resolve the many complex legal issues raised by the Superfund Program. I also wish to thank the members of each of the other four committees of the House who labored with us over this legislation, as well as our friends in the other body. As we all know, this has not been an easy task.

Despite the difficult legal, political, and technological issues that had to be addressed in order to reauthorize this program, we have finished our work. This is a good, strong bill that responds to the needs of this Nation. I urge its adoption.

Mr. Speaker, I yield one minute to the gentleman from Oklahoma [Mr. SYNAR], my colleague on the Judiciary Committee.

(Mr. SYNAR asked and was given permission to revise and extend his remarks.)

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Mr. SYNAR. Mr. Speaker, the Subcommittee on Environment, Energy, and Natural Resources of the Committee on Government Operations has during the past 3 years investigated and documented severe pollution problems at Federal facilities such as Tinker Air Force Base and the Department of Energy facilities at Savannah River, SC, and Hanford, WA. Federal facility hazardous waste management practices and cleanup activities should serve as a model for the private sector. However, this has not been the reality, in part, because EPA and the Department of Justice have not aggressively pursued enforcement actions using civil litigation and administrative orders against recalcitrant Federal facilities. The Superfund Amendments and Reauthorization Act of 1986 preserve the clear statutory authority to bring civil actions and issue administrative orders against Federal facilities. In addition, the new amendments significantly strengthen the role of the States and EPA in expediting cleanup and in the selection of the proper remedial action.

It is also important to clarify that the corrective action authorities of the Solid Waste Disposal Act, particularly section 3004(u), apply to Federal facilities notwithstanding section 121(e) of the Superfund bill, which eliminates the permit requirements for the portion of any removal or remedial action conducted onsite. However, a delegated State or EPA may exercise the corrective action authorities of the Solid Waste Disposal Act to expedite cleanup for any such onsite cleanups or any solid waste management units on a Federal installation, if a permit is necessary for any treatment, storage or disposal facility at such installation. Section 120(i) is intended to make it crystal clear that neither section 121(e) nor any other provision of these amendments preempt the corrective action authorities of the Solid Waste Disposal Act.

Finally, section 120(a)(4), which originated in the Energy and Commerce Committee, is an explicit waiver of sovereign immunity allowing State laws, including State permits and State enforcement provisions, to apply to any removal or remedial actions at Federal facilities which are not conducted entirely onsite at the specific waste area which is listed as the National Priority List Facility.

Mr. LENT. Mr. Speaker, would the gentleman from Kansas [Mr. GLICKMAN] yield for a couple of questions?

Mr. GLICKMAN. I yield 3 minutes to my colleague, the gentleman from New York [Mr. LENT].

Mr. LENT. First let me compliment the gentleman from Kansas who so ably chaired the many meetings of the judicial issues subconference. I was surprised to read the remarks of the Senator from Vermont which were inserted in the October 3, 1986, RECORD. These remarks regarding section 113 on judicial review, section 121 on cleanup standards as referenced in section 113, and section 122 on settlements do not comport with my understanding of the conference agreement. Would the gentleman provide us with his understanding of the conference agreements on these sections?

Mr. GLICKMAN. Mr. Speaker, if the gentleman will yield, I would be happy to. First, let me point out that the Senate RECORD of October 3, 1986, is replete with statements attempting to revise the Superfund conference agreement under the guise of interpretation. For aid in interpreting this legislation, one should rely on the legislative language itself, the statement of managers accompanying the language—which statement was agreed to by all of the conferees—and the relevant underlying legislative history. Any after the fact statements that do not comport with the conference agreement are merely the opinions of the individual conferees.

In essence, new section 113(h) of CERCLA ratifies existing case law on the timing of review and establishes the circumstances under which courts will have jurisdiction to review response actions. Citizen suits and the opportunities for review noted in the cleanup standards section must be consistent with the timing of review provisions.

The timing of review section covers all lawsuits, under any authority, concerning the response actions that are performed by EPA and other Federal agencies, by States pursuant to a cooperative agreement, and by private parties pursuant to an agreement with the Federal Government. The section also covers all issues that could be construed as a challenge to the response, and limits those challenges to the opportunities specifically set forth in the section.

Thus, for example, citizens, including potentially responsible parties, cannot seek review of the response action or their potential liability for a response action unless the suit falls within one of the categories provided in this section. Similarly, the review of the response action within a contribution action will be consistent with the limitations on review set forth in this section. Such review may occur after a potentially responsible party has agreed to undertake the response, has agreed to pay for the response, or is sued under section 106 or 107. Further, review under section 104(e), relating to access, does not open up the response itself to judicial review. Rather, only the President's reasonable belief that there had been a release or threatened release is subject to review.

The only opportunity for review that is not specifically provided for in the timing of review provision is the opportunity set forth in new section 121(f) (2) and (3), the cleanup standards section relating to remedial actions secured under section 106 and remedial actions at facilities owned or operated by a Federal agency. Under that section, a State may bring an action for the sole purpose of determining whether the finding of the President waiving a particular State or Federal standard is supported by substantial evidence. This opportunity does not exist for a fund-financed remedial action, since performance of the remedial action depends on the State's assurance of a share of the costs of cleanup; therefore, the State already has control over the application of State standards to fund-financed remedial action, and no additional process is needed.

The timing of review provisions refers, in its introductory language, to the general jurisdiction provision 28 U.S.C. 1332. This reference was made to ensure that actions in State court under State law can continue to be brought in Federal court if diversity jurisdiction exists. Actions within the scope of diversity jurisdiction may include, for example, a private nuisance suit against a person in another State who is not otherwise acting pursuant to an agreement with the Federal or State government. Thus, this reference to 28 U.S.C. 1332 does not create any additional rights or opportunities to obtain review of a Superfund response action.

The reference to diversity jurisdiction is not to create any additional right to review. Similarly, the reference to "Federal court" is simply to recognize existing section 113(b) of CERCLA, which provides that except for review of regulations, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under circumstances provided in this section.

There is one other phrase in the timing of review provision which should be addressed. The phrase "Taken or secured" as used in this section means that no person may bring any lawsuit in Federal court regarding a federally approved removal or remedial action except when the removal action has been completed or when the remedial action has been taken or secured. "Taken or secured" means that all of the activities set forth in a record of decision which includes the challenged action have been completed. Moreover, there is to be no review of a removal action when there is to be a remedial action at the site. Thus, for example, review of the adequacy of a remedial investigation and feasibility study, which is a removal action, would not occur until the remedial action itself had been taken.

The section is designed to preclude lawsuits by any person concerning particular segments of the response action, as delineated in separate records of decision, until those segments of the response have been constructed. Completion of all of the work set out in a particular record of decision marks the first opportunity at which review of that portion of the response action can occur.

I believe that the remarks of the Senator from Vermont, the distinguished chairman of the Senate Environment and Public Works Committee, inaccurately characterize the conference agreement.

In his remarks regarding the Judicial Review Section, the Senator from Vermont states his belief that:

> It is crucial, if it is at all possible, to maintain citizens' rights to challenge response actions, or final cleanup plans, before such plans are implemented even in part.

This is clearly contrary to the conference agreement in several regards.

First, this approach makes a distinction between so-called citizens and potentially responsible parties. This distinction does not exist in the conference report. The right of persons to use the courts to enforce Superfund is not so limited. Superfund defines persons broadly to include not only neighbors of waste sites but also individuals or corporations who may be liable under Superfund. In fact, the conferees explicitly agreed that all persons would have the same, limited access to preimplementation judicial review.

Second, this approach assumes that section 113(h) of the conference report allows judicial review of challenges to the selection of the remedy—cleanup plan—before the remedy is implemented—built. This is clearly not the effect of section 113(h). The statement of managers accompanying the conference report is explicit on this point

> (A)n action under section 310 would lie following *completion* of each distinct and separable phase of the cleanup." (Empahsis added.)

To support his approach, the Senator from Vermont asserts that judicial challenges should be maintained:

> Before such plans are implemented even in part because otherwise the reponse could proceed in violation of the law and waste millions of dollars of Superfund money before a court has considered the illegality.

This is a valid argument and one which both neighbors of sites and potentially responsible parties have asserted. Neither of these persons want to see an inadequate or inappropriate remedy built. If the remedy is not adequate the neighbors may be injured and the potentially responsible parties may be liable under State law for those injuries. If the remedy has to be rebuilt, the potentially responsible parties may have to pay twice for the cleanup of one site. Notwithstanding these arguments, the conferees decided to ensure expeditious cleanups by restricting such preimplementation review. To balance this restriction on judicial review of the remedy selected by the EPA, the conferees included provisions that require EPA to develop extensive procedures for public participation in the selection of the cleanup plan and the compilation of an administrative record.

The Senator points out that responsible parties "have an obligation to come forward and present their best arguments and the evidence which best sustains those arguments" in the administrative process leading up to the selection of the remedy. While I concur with the Senator on this point, I would like to point out that the conference report does not limit this obligation to potentially responsible parties. This obligation extends to all persons affected by the cleanup, which include the State and the neighbors of the wastesite.

On the issue of what is the administrative record for purposes of judicial review of the selection of a response action, the Senator from Vermont introduced into the RECORD a letter transmitting to a Justice Department official a draft colloquy which was also introduced into the RECORD. Neither this draft colloquy, nor the Senator's comments regarding it, constitute the conference agreement. The conference agreement is clear in its own terms on what the administrative record for response actions will consist of, stating that:

> [New section 113(j) of CERCLA] clarifies the language of the House amendment to provide that the otherwise applicable principles of administrative law will govern as to whether supplemental material may be considered by the court.

Further, in discussing new section 113(k) of CERCLA, which requires the President to promulgate regulations for the establishment of an administrative record upon which the selection of a response action is to be based, the Statement of Managers discusses what will constitute the record until these regulations are promulgated:

> Until the promulgation of regulations under new section 113(k), the record shall consist of those materials developed under current procedures for selection of a response action. The record for a response action selected prior to implementation of these regulations shall consist of the record developed prior to such implementation. General principles of administrative law respecting such records are not affected by this provision.

The Senator also discusses the interplay between nuisance actions under State law and section 113(h). I am afraid he has also missed the point of the conference agreement in this section. Under this agreement, one cannot challenge the remedy selected by the President under the guise of a State nuisance law claim. Pursuant to section 113, Federal district courts have exclusive jurisdiction over all controversies under CERCLA. Therefore, any controversy over a response action selected by the President, whether it arises under Federal law or State law, may be heard only in Federal court, and only under the circumstances provided in this section.

The example cited by the Senator from Vermont for his justification for allowing nuisance actions to challenge the method of cleanup demonstrates exactly why all such controversies must be determined in Federal court, pursuant to the timing of review section contained in the conference report. The Senator from Vermont attempts to distinguish the nuisance plaintiff from the potentially responsible party plaintiff. For the nuisance plaintiff, Senator STAFFORD opines that where the nuisance plaintiff objects to the construction of a toxic waste incinerator as part of site response, only a before-the-fact remedy can adequately protect the parties. Clearly the conferees did not intend to allow any plaintiff, whether the neighbor who is unhappy about the construction of a toxic waste incinerator in the neighborhood, or the potentially responsible party who will have to pay for its construction, to stop a cleanup by what would undoubtedly be a prolonged legal battle. It was for this very reason that the conferees included section 113(h).

On the other hand, section 113(h) does not affect the ability to bring nuisance actions under State law for remedies within the control of the State courts which do not conflict with the Superfund legislation. The language preserving State nuisance actions in a limited manner is intended to preserve the use of State enforcement authority to compel private party cleanup or to otherwise assure that the State or private citizens can continue to abate nuisances resulting from hazardous waste disposal when such actions do not conflict with CERCLA.

Turning now to section 122, Settlements. The conferees adopted the House provision with several modifications based on the Senate provision.

The Senator from Vermont misses

the point of the conference agreement in many respects. I will point out only one instance. He claims that the current Superfund statute "imposes strict, joint and several liability on those found responsible under section 106 or 107 of CERCLA." Neither the existing statute nor the Superfund bills passed by the House and Senate this Congress, nor the conference report, explicitly mandates the imposition of joint and several liability on all responsible parties. As was noted in the Energy and Commerce report of the Superfund Amendments of 1985—Report 99-253:

> (E)xplicit mention of joint and several liability was deleted from CERCLA in 1980 to allow courts to establish the scope of liability through a case-by-case application of "traditional and evolving principles of common law" and pre-existing statutory law. (Citations omitted) The courts have made substantial progress in doing so. The Committee fully subscribes to the reasoning of the court in the seminal case of *United States v. Chem-Dyne Corporation*, 572 F. Supp. 802 (S.D. Ohio 1983), which established a uniform Federal rule allowing for joint and several liability in appropriate CERCLA cases.

The conferees continued this approach.

The items I have described here are only some of the items with which I take issue in the record of the Senate debate on the Superfund conference report. My silence on other issues does not indicate agreement with all of the record of the Senate debate but rather a desire to rely on the agreement set forth in the conference report and the accompanying and underlying legislative history. It is upon this agreement, and nothing more or less, that this body is acting.

Mr. LENT. Mr. Speaker, it is my understanding that the issue of whether the Congress should preempt State and local law with regard to the standard of liability applicable to the activities of response action contractors was one of the last items to be decided by the conferees. As chairman of the subconference which addressed this issue, could you please elaborate as to the provisions in the conference bill, how they differ from the House and Senate passed versions, how the Senate responded to House proposals for a uniform national negligence standard in conference, and whether recent statements in the Senate are consistent with the conference report on this issue?

Mr. GLICKMAN. The House version of the bill had provided for negligence as the standard of liability for cleanup contractors under Federal, State, or common law. The House version further authorized, in subsection (c), the indemnification of contractors in the event they are held liable for negligence, provided certain requirements were met.

The Senate version of H.R. 2005 had no specific provision with regard to what standard of liability should apply, and was also silent as to whether it should apply on a uniform national basis. The Senate bill did contain a separate section dealing with the circumstances under which contractors would be indemnified for liability which might arise under State law or Federal laws other than CERCLA. In fact, section 152 of the Senate bill mandates indemnification against damages arising from the application of a strict liability standard authorizes discretionary indemnification for damages arising out of and based on a negligence standard.

In conference, the Senate was adamant, I might even say intransigent, with regard to its insistence that no Federal standard of liability preempt State liability standards. Given this unyielding position, the House conferees reluctantly agreed to establish a negligence standard only at the Federal level. In addition, all conferees agreed to the following language for the statement of managers:

> The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees urge States to take note of the Federal standards and review their own standards of liability.

When this conference report was before the Senate last Friday, the distinguished senior Senator from Vermont, the leader of the Senate conferees, expressed at length his own views with regard to whether States should establish a negligence standard of liability at all. He openly encouraged States not to follow the example established by the Congress in this conference report.

It is not my intention to express myself with regard to the particular statements made by the Senator from Vermont. However, I believe it is vitally important for purposes of the legislative history that it be understood that the language of the conferees, as set forth in the statement of managers, is the best and surest expression of the intent of the House and Senate on this matter. The language of the conference statement is the best evidence of the intention of the conferees. As noted, the conferees do indeed urge the States to take note of the Federal standard and to review their own standards of liability. The conferees do not presume to know how any individual State will resolve to address this matter. All available options should be considered within the scope of options available to the States.

Mr. LENT. Mr. Speaker, I thank the gentleman for his explanation.

Mr. GLICKMAN. Mr. Speaker, I yield 1½ minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I want to commend the gentleman from Kansas [Mr. GLICKMAN] and others in the Superfund conference for coming out with a very, very good bill under very difficult circumstances. To deal with a matter of this complexity and come out with such balance, given all the pressures, is a significant accomplishment.

It is a good bill in that it protects the environment, but it does not unfairly burden people who ought not to be burdened, and I think it is a good model for how to deal with that.

I want to take a little time now to express my very strong opposition to one piece of this. I am going to vote for it anyway, but there is a differential in the tax piece that has the effect of taxing imported oil more heavily than others.

That has a very negative, in principle, effect on our part of the country. At the level of only 3½ cents a barrel that is in this bill, and given that we were over a barrel by some of the people who wanted to have no bill at all, I can accept this; although I held off signing the conference report to express my disagreement.

I think it ought to be clear that many of us, particularly in the Northeast who are supportive of Superfund and were prepared to make this rather small compromise here, do not consider this a precedent as a general revenue raiser, and any effort to broaden this and get the oil import fee differential to where it would be a very significant economic disadvantage would be opposed.

We will live with it here because we have to; because a place that we may not mention insisted on it, but it ought not to be considered a precedent; and it is only in that very narrow context that we can accept even this very small differential.

Mr. RODINO. Mr. Speaker, at long last, the House-Senate conference committee on the reauthorization of Superfund has successfully completed its work. This body now has the opportunity to adopt the conference agreement, and thus ensure that a strong and vigorous Superfund Program that is adequately funded will be in place to clean up hazardous waste sites between now and 1990.

Reaching this agreement has been an arduous task, one in which the conferees have grappled with many complex legal and technical issues, and one in which we have sought to address the legitimate, though often conflicting, concerns of those affected by the program.

Toxic waste cleanup is a critical, urgent problem facing this country. The conference report vigorously addresses this problem. It contains many significance provisions which strengthen the current Superfund Program in ways that are essential to the future of this Nation. It has new provisions on community right-to-know. It addresses the radon problem, an issue of great significance in many States, including my home State of New Jersey. It will allow individuals to sue for damages that result from exposure to toxic substances even if many years pass before they discover their injury or its cause. It ensures that affected localities, as well as responsible parties, will have a say in the type of cleanup to be conducted at a site.

Without question, this conference agreement will significantly strengthen the existing Superfund Program and fund it at an adequate level. While there are provisions that could be even stronger, I nevertheless believe we must act now to prevent this critical program from being crippled by still more interim funding proposals that prevent a vigorous cleanup program from addressing our toxic waste problems.

Finally, I wish to thank all my colleagues on both the Judiciary Committee and the other Committees of Jurisdiction for their tireless efforts to complete this conference. The result is one in which we can all take satisfaction, and I urge its adoption by the House.

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that any remaining time I may have be given to the gentleman from Michigan [Mr. DINGELL].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The SPEAKER pro tempore. Is there a ranking minority member from the Committee on the Judiciary who wishes to be recognized at this point? If not, the Chair recognizes the gentleman from New York [Mr. LENT].

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. RINALDO].

(Mr. RINALDO asked and was given permission to revise and extend his remarks.)

Mr. RINALDO. Mr. Speaker, I wish to congratulate the members who put this piece of legislation together and who have worked so hard: The chairman of the full Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], the ranking minority member, the gentleman from New York [Mr. LENT], the gentleman from Ohio [Mr. ECKART], and three colleagues from New Jersey who have done extensive work and were very diligent in their efforts: Congressman HOWARD, Congressman ROE, and Congressman FLORIO, who is also a member of the Committee on Energy and Commerce.

Today's action will restore public confidence in the Government's commitment to clean up the Nation's toxic waste dumps by reauthorizing the Superfund Program with increased funding.

Surveys have shown that the hazardous waste threat is a major environmental concern in every State in the country. This is particularly true in New Jersey which has 91 of the 703 hazardous waste sites on the Superfund national priority list. That is far more than any other State.

The program was authorized for 5 years in 1980 with a $1.6 billion budget derived primarily from an assessment on the chemical industry for the purpose of cleaning up the Nation's most dangerous toxic waste dumps.

The Superfund law enacted in 1980 called for a fund of $1.6 billion to pay for the cleanup of abandoned hazardous waste sites around the country. But we know far more about the problem today than we did then. According to estimates furnished by the Office of Technology Assessment, there may be as many as 10,000 such sites around the country; cleaning them up will cost billions of dollars.

Clearly, the dimensions of the problem we face are far beyond what Congress anticipated in 1980 and what the existing Superfund law can hope to accomplish. We need to adopt this bill and swiftly enact this new program to show our constituents that we are serious about addressing this national problem.

Hazardous waste sites are a toxic time bomb which threaten our health and safety. Leakage from underground storage tanks and the improper disposal of wastes into corroding barrels has meant the seepage of toxic contaminants into our ground water. We must act now before irreversible damage is done to our drinking water supply. To delay not only increases the costs of this vital clean up but raises the magnitude of this problem for our children and future generations.

This bill clearly is not perfect. It is a compromise. Our goal is not to enact a perfect bill: it is to improve upon the existing law by adopting the strongest possible measure that will lead to cleaning up these dangerous sites.

Mr. Speaker, I am pleased that the House finally has the opportunity to pass a strong Superfund bill, and I urge my colleagues to join with me in voting in favor of this important legislation.

Mr. CRANE. Mr. Speaker, I reserve the balance of my time.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Kansas [Mr. WHITTAKER], the ranking minority member of the Subcommittee on Commerce, Transportation, and Tourism.

(Mr. WHITTAKER asked and was given permission to revise and extend his remarks.)

Mr. WHITTAKER. Mr. Speaker, I would like to commend my many colleagues who have worked so hard and so ably to produce this conference report. I know that it was touch-and-go for a while on whether the major issues would be resolved so that we could take final action on reauthorization of this program.

Chairman DINGELL, Mr. FLORIO, and Mr. LENT deserve special credit for their good work on crafting this legislation.

Of course, the value and importance of the Superfund Program made their work so urgent. This program is vital to our efforts to protect the health and well-being of the American people and the environment in which we live. I urge the President to approve this legislation.

Mr. Speaker, one aspect of this conference report which is particularly critical to my district is the Radon Demonstration Program. The EPA recently identified the eastern one-fifth of the State of Kansas as an area which could have elevated radon levels.

In my district we had large-scale mining operations for coal, lead, and zinc. This is the type of activity that is frequently coincidental with the presence of dangerous levels of radon.

The EPA has already done some radon testing at the Superfund site in Cherokee County, KS. This testing was not done under ideal circumstances and was completed before EPA released its radon guidelines in August.

Elevated levels of radon were found in this small sample of buildings and homes. The problem is evident and the people of these affected communities deserve attention.

The State of Kansas has very limited resources to deal with this potentially massive problem. However, the agency in charge is very sensitive to the problem and is ready to begin radon monitoring and research if funding is made available.

I have discussed this issue with EPA's regional office in Kansas City and am convinced that they are eager and able to take part in this demonstration program we are approving today. They believe that there is a critical necessity to define the radon problem in Kansas.

Mr. Speaker, I think these facts make it clear that the hidden dangers of radon are as real and urgent in Kansas as they are in Northeastern States. I call on the EPA to allocate sufficient funds from this demonstration program to address the critical radon situation in southeast Kansas.

□ 1600

The SPEAKER pro tempore (Mr. PANETTA). Is there a member from the Committee on Merchant Marine and Fisheries who wishes to be recognized for the time assigned to that committee, on the majority side?

Is there a member from the Armed Services Committee who wishes to be recognized?

The Chair recognizes the gentleman from Oklahoma [Mr. McCURDY] for 2½ minutes.

(Mr. McCURDY asked and was given permission to revise and extend his remarks.)

Mr. McCURDY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference agreement, which deals with one of the most important public health issues that has come before this Congress.

I especially want to call my colleagues' attention to that portion of the legislation that sets up a Department of Defense Environmental Restoration Program to strengthen the cleanup of hazardous waste sites at military installations. I served as a conferee on this section, and much of the language is the result of several months of hard work by a number of members on the Armed Services Committee, who served on the bipartisan environmental restoration panel I chaired.

The conference agreement requires that the Defense Environmental Restoration Program be carried out in a manner consistent with CERCLA. The conference accepted the House provisions concerning the establishment of a research, development, and demonstration program, and the requirement that DOD provide a listing of hazardous substances with ATSDR.

The conference also accepted the House provisions regarding DOD notification of environmental restoration activities; the requirement for an annual report to Congress; and procedures governing DOD military construction environmental response actions.

Mr. Speaker, this is urgently needed legislation, and I urge the adoption of the conference report.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. Is there a minority member on the Armed Services Committee who wishes to be recognized for their time? If not, the gentleman from New York [Mr. LENT] is recognized.

Mr. LENT. Mr Speaker, I yield 1½ minutes to the gentleman from Texas [Mr. FIELDS].

(Mr. FIELDS asked and was given permission to revise and extend his remarks.)

Mr. FIELDS. Mr. Speaker, I rise in reluctant support of this Superfund conference report. I rise in reluctant support because, while I support the reauthorization of Superfund, I am strongly opposed to the tax provisions which force the petroleum industry to shoulder a disproportionate amount of the cleanup cost of hazardous waste sites.

The House-Senate conference agreement raises $8.5 billion—$2.75 billion from a crude oil tax, $1.4 billion from chemical feedstocks taxes, $2.5 billion from a levy based on the corporate alternative minimum tax, $1.25 billion from general revenues and $600 million from interest plus moneys recovered from responsible companies.

The petroleum industry is required to pay a full 32 percent of the cost of abandoned hazardous waste site cleanup. I emphasize the word "abandoned." Superfund taxes are collected primarily to pay for the cleanup of sites for which no solvent responsible company or individual can be found. The slogan, "make the polluter pay," has been bandied about time after time during Superfund debate. Well, the polluter does pay. Individual companies already pay for cleanups when they are responsible. The polluter already pays to clean up his own waste. Superfund taxes determine who will pay for the other fellow's waste when the other fellow can't be found or is financially insolvent.

I suppose the petroleum industry happened to be the easiest target. The 1,275-percent increase in crude oil taxes contained in this conference report certainly has nothing to do with fairness or equity.

Many of my colleagues may not be aware that, since December, employment in the exploration and production sector of the domestic oil and gas industry has dropped by more than 22 percent. The U.S. drilling rig count had plummeted from over 1,900 to 800. Imports of crude and crude products escalated to 41 percent of U.S. consumption in August, up from 28 percent in August of 1985. Imports of crude from the Middle East more than tripled during that same period. Whether you represent a producing or a consuming State, OPEC's attempt to shut down U.S. domestic oil production should concern you. We are rapidly delivering the American consumer into the clutches of OPEC, again.

It is inconceivable to me that, instead of acting to preserve our national energy security, Congress is acting to further the deterioration of our domestic energy industry. The recently approved tax reform legislation is estimated to drain in excess of $10 billion over 5 years from the domestic oil and gas industry. And, if that isn't bad enough, here we are, only a few short weeks later, giving the domestic energy industry another $2.75 billion hit. While it is true that domestic crude will pay an 8.2-cent per barrel tax compared to an 11.7-cent per barrel tax on imported crude, this differential will provide little relief. It's a little like applying a Band-Aid to a hemorrhage.

Forcing the petroleum industry to bear the brunt of Superfund taxation isn't fair, it isn't equitable and it doesn't make sense.

I must commend the House conferees, however, for the adoption of a $2.5 billion broad-based tax. The broad-based tax component should have been larger. Nevertheless, the levy represents a recognition that hazardous wastes are a societal problem. Two industries, alone, cannot continue to bear the entire burden for the cleanup of abandoned hazardous waste sites.

Despite my disdain for increased petroleum taxes, I will support this conference report. The Superfund Program has been operating on a stop-gap for the past year. We must get on with the cleanup of hazardous waste sites.

I have worked to reauthorize Superfund from the bill's infancy stages in the Energy and Commerce Committee all the way through the conference committee on which I served.

The conference was an extremely difficult one. Chairman JOHN DINGELL deserves a great deal of praise for the fact that a conference report is before the House today. If it weren't for his able leadership, Superfund reauthorization would still be languishing in conference. I have to pay my highest respect to Energy and Commerce ranking minority member, NORM LENT, for his able service, too. He worked tirelessly in crafting this Superfund bill. Likewise, I extend my thanks to my colleague, DENNIS ECKART and every other member who worked to bring this legislation through conference.

Finally, I want to thank the ranking minority member of the Senate Environmental and Public Works Committee and fellow Texan, Senator LLOYD BENTSEN, for his service on both the programmatic and tax portions of this package.

The Superfund reauthorization package before us today is not perfect. It is the product of intense negotiations resulting in countless compromise positions. Those negotiations did not always yield the result I would have liked, but such is the nature of compromises.

My colleague, Mr. LENT, has already provided the House with an excellent statement on the Superfund package, so I will be brief.

When Congress first enacted the Superfund Program 6 years ago, little was known about the extent of our Nation's hazardous waste problem. Now, we know a great deal more. We know the problem is bigger than anyone initially anticipated. We know the sites will be more expensive to cleanup than anyone initially anticipated. We know that the Superfund Program which is now is place has not worked as well its authors had hoped. Yet, there is still so much we don't know.

Scientific knowledge is increasing, technology is improving. But, hazardous waste cleanup is still in its infancy stages. Cleanup technologies are expensive and imperfect. There are no easy answers. That is why the Superfund reauthorization process has been so long and difficult.

When I examined the reasons the current Hazardous Waste Cleanup Program has not worked well, I concluded that the lack of cost-effective technology to cleanup complex hazardous waste sites was a major problem. But, I also concluded that the Superfund Program's strong emphasis on litigation was a very serious flaw. I discovered that as much as 50 percent of Superfund money was being spent on litigation, not cleanup of waste sites.

This Superfund reauthorization bill sends a strong signal to the Environmental Protection Agency and to the Department of Justice that Congress wants settlement, not litigation, with potentially responsible parties whenever possible. Paying immense lawyers' fees does nothing to protect health of American citizens. In fact, litigation merely extends the health threat to our citizens by delaying cleanups.

Senators BENTSEN, SIMPSON, and DOMENICI were key players in drafting language encouraging settlements over litigation. Congressmen LENT, TAUZIN and others joined me in advocating stronger settlement policy on the House side.

Under the settlement language included in the conference report, EPA and the Justice Department are given explicit authority to enter into settlement agreements. EPA is required to establish guidelines for development of nonbinding preliminary allocations of responsibility. Under this procedure, EPA would notify potentially responsible parties, provide them with the identity of other responsible parties and information on the volume and nature of the waste contributed by those parties. After providing such information, EPA would be required to suspend action for a period of 60 to 120 days to give the responsible parties time to develop a settlement offer.

Additionally, this conference report encourages settlements by EPA specific authority to use Superfund moneys to pay for so-called orphan shares. Orphan shares are those portions of cleanup costs for which no solvent responsible party can be found. Since Superfund tax revenue is collected to pay for the cleanup of sites where no solvent responsible party can be found, it is logical Superfund moneys should be used to pay for shares at a Superfund site when not all responsible parties can be found.

Finally, EPA is given authority to grant meaningful releases from future liability when specific conditions are met. Granting meaningful releases from liability ensure that a company which acts in the public interest to cleanup a hazardous waste site will not be sued again in the future. Meaningful releases from future liability will encourage settlements, too.

In closing, Mr. Speaker, I want to thank all Members from both sides of the Capitol for their hard work in reauthorizing Superfund.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New Jersey [Mr. FLORIO].

Mr. ROE. Mr. Speaker, I yield 2 additional minutes to the gentleman from New Jersey [Mr. FLORIO].

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. I thank the two gentlemen for yielding this time to me.

Mr. Speaker, I am pleased to rise in support of the conference report on legislation to extend and expand the Superfund Program. The bill provides $9 billion in funding for a second 5-year installment of the cleanup effort. It carries out several fundamental reforms of the program, including the establishment of uniform national cleanup standards and tougher deadlines for the cleanup of federally owned or operated facilities. The bill also creates two new and urgently needed national programs: a $500 mil-

lion effort to clean up leaking underground gasoline storage tanks and a comprehensive community right-to-know disclosure program.

While we can all support this legislation, which gives the Environmental Protection Agency [EPA] the money and tools it needs to revitalize the cleanup of thousands of toxic hazards across the country, the legislation unfortunately leaves the pace of cleanup too much to the agency's discretion. Our failure to adopt strict schedules for cleanup means that the ultimate success of the program depends on the will of the agency and this administration to use tools and resources effectively.

I would like to commend all of those who participated in the long and difficult process that brought us to this day. This has been a terribly controversial piece of legislation and it is a tribute to all involved that we are here today to pass this conference report.

I would like to point out several things. It is a major goal of the Superfund Amendments and Reauthorization Act of 1986 [SARA] to establish a statutory bias toward the implementation of permanent treatment technologies and permanent solutions whenever they are feasible and achievable. The implementation of such solutions at sites cleaned up under the program is the only way to ensure the successful completion of the cleanup effort.

"Permanent treatment or alternative technologies" mean treatment methods that permanently and significantly reduce the volume, toxicity, or mobility of the hazardous substances, pollutants, and contaminants. Significant reduction is the minimization of volume, toxicity, and mobility of such substances to the lowest levels achievable. Such technologies change the fundamental nature and character of the substances at issue, either by destroying them, for example, incineration, or neutralizing them, for example, application of chemical or bioengineered neutralization agents. Mere reductions in volume of toxic and mobile substances would not constitute effective use of a permanent treatment or alternative technologies.

The legislation states that specific standards, requirements, criteria, or limitations developed under Federal and State health and environmental laws shall be applied to Superfund cleanups if they are applicable or "relevant and appropriate."

The first test of relevance and appropriateness is whether the standard, requirement, criteria, or limitation at issue was developed for the same environmental media as the media contaminated by the Superfund site. Standards developed under the Clean Water Act and the Safe Drinking Water Act would, therefore, be relevant both to contaminated ground and surface water at a Superfund site. Similarly, Clean Air Act ambient air standards would be relevant to air emissions of hazardous substances, pollutants, or contaminants released from a Superfund site.

A central goal of the cleanup standards section of the legislation is to prohibit the writing off of potentially useful ground water supplies that have been contaminated by Superfund sites. Such natural resources are both finite and irreplaceable. The purpose of the Superfund Program is to reclaim such contaminated resources whenever possible.

Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria established maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20-30 such chemicals. The legislation specifically permits EPA to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision only affects the selection of the appropriate exposure level. Water quality criteria which were originally developed for surface water should be applied in situations where ground water is contaminated by a water quality criteria chemical.

The settlement provisions of the legislation are premised on the current Superfund Liability System, which imposes strict, joint and several liability on those found responsible under section 106 or 107 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA].

The importance of placing the settlement procedures established under section 122 in the context of Superfund's liability scheme cannot be underestimated. Settlements are an alternative to full prosecution of strictly, jointly and severally liable parties and must always be evaluated in relation to the relief the Government could have obtained by litigating the case. Because Superfund imposes liability without regard to fault, and holds that when the harm is indivisible, each party is jointly and severally liable for the full costs of cleanup, settlements for only a portion of cleanup costs must be measured against a high standard. When a liability scheme is as strong as the scheme contained in Superfund, recoveries of amounts less than full costs are disfavored and may only be justified by exceptional circumstances.

One of the most important issues addressed by the legislation is the timing of citizens' suits challenging illegal EPA decisions. Such suits would involve allegations that the agency has violated the cleanup standards and other requirements of the law and that a citizen's health and environment would be threatened if the agency was allowed to continue with its illegal acts.

A major goal of the legislation is to establish specific, uniform national health standards that will apply to EPA's cleanup decisions at Superfund sites. While we fully expect the agency to adhere to these standards, past experience has demonstrated that enforcement of such legal requirements by affected citizens' groups—acting as private attorneys general—is an essential component in the implementation of any detailed statutory mandate. For this reason, the amendments establish an independent citizens' suit provision under new section 310 of the act.

In order to be fully effective in enforcing the law's cleanup standards provisions, such suits must be brought at a point in the cleanup process where the agency could easily be ordered to modify its violative behavior. A final cleanup decision, or plan, constitutes the taking of action at a site, and the legislative language makes it clear that citizens' suits under section 310 will lie alleging violations of law and irreparable injury to health as soon as—and these words are a direct quote—"action is taken."

Section 104(k) of the legislation, adding new subparagraph 104(c)(9) to the act, clarifies the President's authority to withhold Superfund money in States that fail to demonstrate good faith efforts to plan for adequate disposal capacity of hazardous wastes generated within the State, beginning 3 years after the date of enactment, for a 20-year period.

The 3-year deadline is not intended to impose a requirement that the States establish physical disposal capacity—that is, actually site, build, and permit disposal facilities—within the time period because we clearly recognize that this kind of assurance would be impossible for most States to provide. Instead, the language is intended to require States to make good faith efforts to plan for future disposal capacity for the cleanups that will be carried out in the State.

Finally, there is the important issue of whether the President's decisions under section 104(k) are judicially reviewable. When we adopted this language, we intended to make the decisions whether to withhold remedial actions and whether to approve State assurances discretionary, thereby precluding review by any outside party. We did not want to create a situation where potentially responsible parties at a site could use this provision as an excuse to stop cleanup despite EPA's decision to continue such remedial actions.

However, we recognize that a State might submit what it considered to be an adequate, good faith assurance, and EPA might reject the assurance in an arbitrary and capricious fashion. In such instances, we intended to give the State the ability to appeal the Agency's decision to the appropriate Federal court.

Sections 120 and 121 of the legislation, coupled with the citizens' suit provisions of new section 310, create a program for the cleanup of Federal facilities which significantly strengthens the authority of EPA, the States and citizens in selecting remedies and requiring compliance, including the imposition of penalties. The Federal facilities program under Superfund should be implemented to complement, and not replace in any manner, the corrective action authorities of the Solid Waste Disposal Act. Section 120(i) is an explicit clarification that, notwithstanding section 121(e), a delegated State continues to have the authority to enforce the corrective action requirements of sections 3004 (u) and (v) of the Solid Waste Disposal Act of any treatment, storage, or disposal facility of a Federal installation. Further, section 120(a)(4) provides that sovereign immunity is waived, and State laws have full force and effect, with respect to cleanups at Federal facilities of waste management areas which are not included on the National Priorities List.

Section 210 of the bill adds a new title IV to CERCLA authorizing risk retention groups and insurance purchasing groups for pollution liability insurance. However, at the same time that we have been working on the present bill, Congress has been working on the Risk Retention Amendments of 1986, which create general authority for liability insurance risk retention and purchasing groups, including those providing pollution liability insurance. This general risk retention legislation contains safeguards for the public interest which are not explicitly provided for in the new title IV of CERCLA. The Risk Retention Amendments of 1986 contain a provision declaring that the safeguards of the Risk Retention Amendments apply to title IV of CERCLA. Furthermore, the Risk Retention Amendments explicitly do not restrict or otherwise affect the authority of Federal and State governments under any other Federal law (including CERCLA and the Solid Waste Disposal Act) to impose financial responsibility requirements, including the means of demonstrating such financial responsibility. As a principal involved in the development of both bills, I wanted to make the legislative intent on these points as clear as possible.

Mr. CRANE. Mr. Speaker, I yield 10 minutes to the distinguished gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. I thank the gentleman for yielding time to me.

Mr. Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. WIRTH] for purposes of a colloquy.

The SPEAKER pro tempore. Without objection, the gentleman from Colorado [Mr. WIRTH] is recognized for 2 minutes.

(Mr. WIRTH asked and was given permission to revise and extend his remarks.)

Mr. WIRTH. I thank the gentleman for yielding time.

Mr. Speaker, the attorney general from the State of Colorado has raised a concern about the application of sections 120 and 121 to hazardous waste facilities located within Federal installations.

My question for the gentleman from Ohio is, did the conferees intend for section 120(a)(4), concerning the applicability of State laws at facilities not on the national priorities list, to alter or affect the manner in which section 121 applies substantive State standards to facilities on the national priorities list?

Mr. ECKART of Ohio. If the gentleman will yield, the answer to the gentleman's question is no. Section 120(a)(4) does not alter the way section 121 applies substantive State standards to remedial actions at facilities owned or operated by a department, agency, or instrumentality of the United States which are on the national priorities list.

Mr. WIRTH. Section 120(i) continues the obligation of any department, agency, or instrumentality of the United States to comply with any requirements of the Solid Waste Disposal Act—including corrective action requirements.

Did the conferees intend that the phrase "any requirement of the Solid Waste Disposal Act" include compliance with State standards and regulations adopted by the State as part of their effort to obtain delegation of the Resource Conservation and Recovery Act [RCRA] Program?

Mr. ECKART of Ohio. Yes; any requirement includes the State standards and regulations the gentleman has referred to.

Mr. WIRTH. I thank the gentleman.

At this point, I want to commend the gentleman from Ohio, and the chairmen of the Energy and Commerce Committee, the Public Works Committee, and the Commerce subcommittee for their fine work in putting together a strong Superfund reauthorization package. I know they put in many long, hard hours in hammering out a compromise, but this conference report was well worth the effort.

Mr. Speaker, this conference report responds to the people of Colorado who are calling for action to clean up hazardous waste sites.

I know that the citizens of South Adams County, whose ground water has been contaminated, want to see this bill enacted into law. I know the citizens of Colorado Springs want to see the Arkansas River cleaned up.

This new, strengthened Superfund law gives EPA the tools and the resources it needs to get on with the job of cleaning up these sites and protecting the health of our citizens. And it preserves the State's right to be a partner with EPA in cleaning up these sites.

Mr. Speaker, this bill is a good bill for Colorado, and a good bill for the Nation. I urge all of our colleagues to vote to adopt this conference report. There will be no more important health and environmental protection vote this year.

I call upon the President to sign this bill, which took us 3 long, hard years to put together.

Mr. ECKART of Ohio. Mr. Speaker, I yield 1 minute for purposes of a colloquy to the gentleman from Florida [Mr. LEHMAN].

The SPEAKER pro tempore. Without objection, the gentleman from Florida [Mr. LEHMAN] is recognized for 1 minute.

There was no objection.

(Mr. LEHMAN of Florida asked and was given permission to revise and extend his remarks.)

Mr. LEHMAN of Florida. I thank the gentleman for yielding time to me.

Mr. Speaker, if I may engage the gentleman from Ohio in a colloquy. The amendments to section 105 call for revision of the Hazard Ranking System and would apply the revision prospectively to new candidates for the national priorities list. This bill makes it clear that EPA is not obliged either to apply the revised Hazard Ranking System to sites already listed on the national priorities list or to rescore the sites.

I believe, however, that this should not preclude the EPA from rescoring a site if it determines that a significant scoring error has been made.

I am specifically referring to the Munisport site in the congressional district that I represent in the State of Florida. The city of North Miami acquired this site from the State in 1970 for a recreational complex. Before the complex be built, fill was required. So, between 1976 and 1980, a municipal landfill was operated on designated portions of the site under county, State, and Corps of Engineer permits.

In 1983, without the knowledge of the city of North Miami, the site was placed on the national priorities list where it occupies the 466th spot. The site scored 32.37; and score above 28.5 qualified a site for listing. One of the main reasons for this high score was the fact that the scorer recorded two well fields serving the cities of North Miami Beach and North Miami within 3 miles of the site. However, the city of North Miami has stated that both well fields had permanently ceased operation because of salt water intrusion—one 3 years before, the other 2 months before the site was proposed for listing in 1982.

Florida's environmental agency recalculated the score as 10.57, a full 18 points below the qualifying score for the national priorities list. EPA acknowledged in its 1984 Remedial Action Master Plan for the site that both well fields have been closed. Both the State and the city have asked EPA to rescore the site, and remove it from the national priorities list.

I am a very strong supporter of the Superfund Program, but believe that the EPA needs to take a closer look at whether this site should be removed from the national priorities list. The city of North Miami and the State of Florida are already conducting a $205,700 study in preparation for capping and closing the site in accordance with State law. I believe that the EPA needs to work with the city and review this data instead of requiring a more costly remedial investigation before the agency will consider delisting.

Is it the position of the conference committee that a currently listed site can be rescored if the EPA concludes that there was a verifiable factual error? If the new score justifies it, can the site be removed from the national priorities list without a costly and time-consuming remedial investigation or cleanup effort?

Mr. ECKART of Ohio. Without agreeing or disagreeing with any of the factual representations made by the gentleman, the Environmental Protection Agency has the existing statutory authority to rescore a facility prior to a remedial investigation and feasibility study where the Administrator determines, in his discretion, that a significant factual error was made in the scoring of a facility and such error would cause the facility to be removed from the national priorities list.

Mr. LEHMAN of Florida. Mr. Speaker, I thank my friend, the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Speaker, for purposes of a colloquy, I yield such time as he may consume to my colleague, the gentleman from Ohio Mr. LUKEN.

The SPEAKER. Without objection, the gentleman from Ohio [Mr. LUKEN] is recognized

There was no objection.

Mr. LUKEN. I thank the gentleman for yielding time to me

I also want to admire the work of the committee, the chairman, the gentleman from Ohio, and others from the committee for the tremendous work in bringing about this minor miracle—including the gentleman from Louisiana, too.

Mr. Speaker, if I may engage the gentleman in a colloquy, I would like to clarify the legislative intent of section 202.

Section 202 requires the Department of Transportation [DOT] to promulgate regulations for the transport of hazardous substances, as defined by the Superfund statute. The list of hazardous substances has been compiled by incorporating substances on other, statutorily prescribed lists. Under some circumstances, substances such as chrome in metal finishing wastes or saccharin in foodstuffs may pose a threat to human health or the environment and have been included on the list of hazardous substances lists. Under other circumstances, however, such as a truckload of chrome bumpers or a truckload of saccharin or saccharin-containing beverage concentrates, the materials may not pose a threat to human health or the environment. I would like to clarify that it is not the intent of the conference to burden shippers of such listed substances which may not be hazardous because of the circumstances with substantial additional paperwork or other regulatory requirements that cannot be justified by the level of hazard these substances pose.

Mr. ECKART of Ohio. If the gentleman will yield. The gentleman is correct as usual. Section 202 was included to require that the Department of Transportation promulgate regulations which will ensure proper and safe handling of substances which pose a threat to human health or the environment should such materials be released during transport. The section does not require, however, that all listed hazardous substances be treated with identical regulations. It is the intent of the provision that DOT promulgate appropriate regulations for listed hazardous substances based on the threat to human health and the environment that those substances would pose should they be released during transport.

Mr. LUKEN. Mr. Speaker, I thank the gentleman. I think that does clarify the intent of section 202.

Mr. ECKART of Ohio. Mr. Speaker, I am pleased to yield such time as he may consume, for the purpose of a colloquy, to the gentleman from Washington [Mr. SWIFT].

(Mr. SWIFT asked and was given permission to revise and extend his remarks.)

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

The SPEAKER pro tempore. Without objection, the gentlemen from Washington [Mr. Swift] is recognized.

There was no objection.

Mr. SWIFT. Mr. Speaker, am I correct that the conference agreement requires the President, in selecting a remedial action, to select a cost-effective remedial action that assures protection of human health and the environment, and that permanently solves the problem to the maximum extent practicable. As I understand the statutory language, a permanent treatment or alternative technology is one in which the permanent and significant reduction of the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element. I do not understand the statute to require, as was suggested on the other body, that this means "the minimization of volume, toxicity and mobility of such substances to the lowest levels achievable with available technologies," or that such technologies must be chosen whenever they are feasible and achievable. Am I correct?

Mr. ECKART of Ohio. If the gentleman will yield, you are correct. First of all, the statute refers to the significant reduction of volume, toxicity or mobility—using the disjunctive "or" rather than the conjunctive "and." Second, neither the statute nor the joint statement includes a standard requiring such reductions to the lowest levels achievable with available technologies. A technology may be available but not be a cost-effective remedial action under the circumstances, and would therefore be ineligible for consideration under section 121. Finally, neither the statute nor the joint statement refer to a standard of "feasible and achievable." The statutory standard agreed upon by the conferees is the utilization of "permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable." Unlike a "feasible and achievable" standard, this standard requires the consideration of both technical and nontechnical factors.

Mr. SWIFT. I understand section 121(c) of the statute to require that if any of the hazardous substances, pollutants or contaminants remain at the site as part of the remedial action, the President must review that remedial action at least once every 5 years. Does that section require the President, as was stated in the other body, to initiate a new remedial action if, as a result of one of these reviews, he determines that a permanent or alternative treatment technology has been developed since the remedial action was first selected, and to implement such technologies wherever possible?

Mr. ECKART of Ohio. No, there is no such requirement in section 121(c) or elsewhere in the act. The purpose of the 5-year review is to assure that human health and the environment are being protected by the remedial action being implemented. If human health and the environment are not being protected, then the initial remedial action would have to be considered unsuccessful, and additional actions would be necessary. As for additional actions, including the implementation of new technologies that would go beyond the minimum protection of human health and the environment, section 121(c) authorizes the President to take or require such actions if "it is the judgment of the President that action is appropriate at such site in accordance with section 104 or 106 * * *."

Mr. SWIFT. It was also stated in the other body that the statutory requirement for permanent solutions should not be read to constrain the Administrator's flexibility in selecting a cost-effective remedy appropriate for the specific site. It was my understanding of the conference agreement that it does indeed constrain the Administrator's flexibility, and that the statute requires the selection of permanent solutions in many cases where we haven't seen such solutions in the past. Is that a correct understanding?

Mr. ECKART of Ohio. That is a correct understanding. As an example of how this statute contrains EPA's flexibility, EPA has in the past been deterred from choosing more permanent remedial actions because the costs of such actions are usually greater than the costs of land disposal. This has sometimes been the case even when long-term costs are considered. The conference agreement requires EPA to consider permanent solutions even though they may be very costly, and makes it clear than EPA may not reject a permanent solution just because it may cost more than land disposal.

Mr. ECKART of Ohio. Mr. Speaker, I would retain the balance of my time yielded to me so kindly by the gentleman from Illinois [Mr. CRANE] for the purpose of further colloquy.

The SPEAKER pro tempore. Is the gentleman reserving his time? The gentleman does not have unanimous consent with regard to the time that was provided.

Mr. ECKART of Ohio. Mr. Speaker, if I may, I would like to request unanimous consent to reserve the balance of my time for the purposes of engaging in additional colloquies with two Members who are in other hearings at this time, specifically for the purpose of colloquies such as we have recently conducted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. FISH] is recognized for 7½ minutes on behalf of the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut [Mr. MCKINNEY].

(Mr. McKINNEY asked and was given permission to revise and extend his remarks.)

Mr. McKINNEY. Mr. Speaker, I would suggest that this is probably the most important timebomb in America's future as to how we treat our environment and I congratulate the House on finally getting to it.

Mr. Speaker, I rise today in strong support of the Superfund conference report before the House. After almost 3 years of work on this Superfund reauthorization, Congress has developed legislation which will extend this vital environmental program into the 1990's.

Last Friday, the other body approved this measure by an overwhelming vote of 88 to 8. I urge the House today to follow that strong example with an unambiguous message of its own: Superfund must be reauthorized now!

As my colleagues are now, and as our Nation's citizens are becoming increasingly aware, the magnitude of our hazardous waste cleanup problem is frightening. There are 847 sites on the EPA's National Priorities List for Superfund cleanup. the 18 States of the Northwest and Midwest have 516 of the sites list. New England has 57 sites, and there are 6 in my home State of Connecticut, with one in my congressional district.

These figures are shocking enough. However, let's keep in mind that these are only the sites that have been formally added to the priorities list. Thousands of additional sites have been proposed and are being studied for inclusion on the list.

The conference report before us today would allow our Nation to make great strides in meeting this challenge. Some of the critical elements of the conference agreement are:

A comprehensive program designed to provide the public and community emergency personnel with detailed information about chemical threats;

A timetable for Superfund cleanups to ensure that the EPA will act far more aggressively than in previous years;

Stringent standards for cleanup of Superfund sites, which mandate that each site meet appropriate standards set in other Federal environmental laws for specific hazardous substances;

A program for the cleanup of hazardous substances from federally owned property;

A special tax to pay for the cleanup of leaking underground gasoline storage tanks;

Requirements to ensure public participation in the cleanup decisionmaking process; and,

A process for reaching cleanup agreements between EPA and responsible parties;

This bill also authorizes $9 billion in revenue authority for the Superfund Program. This total will be comprised of: $2.5 billion raised through a new broad-based corporate tax; $2.75 billion through a petroleum excise tax; $1.4 billion through chemical feedstock taxes; $1.25 billion in general revenues; $0.5 billion in gasoline taxes; and $0.6 billion in interest and cost recovery.

Mr. Speaker, in my congressional district lies one of 847 National Priorities List sites. This site is located along the western bank of the Norwalk River in Norwalk. It covers 10 acres and is owned and operated by the Norwalk First Taxing District Water Co. The EPA recently announced that it has selected a method to begin the first step in the long-term cleanup of the site. Passage of this conference report will mean that projects such as this one will ultimately be completed.

The House should take decisive action today and send a clear message to the White House that vetoing this vital legislation would be a mistake. Our Nation needs a strong national program for hazardous waste cleanup. We should adopt this conference report in an overwhelming obligation.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, I rise in support of the legislation we have before us today to reauthorize Superfund, the Nation's toxic waste cleanup law. It is critical legislation that must be enacted immediately if we are to avoid the shutdown of a program already damaged by months of delay.

The first 5 years of Superfund have had mixed results. I do not believe that Congress understood the size of the problem when it first considered Superfund in 1980. Each new day brings the discovery of additional sites which require cleanup—sites which were not even identified when Congress first passed Superfund. Virtually every Member in this body has at least one site in his or her district requiring attention. The effects of these sites upon the health and safety of the Nation is obvious and is ample reason as to why this program is so important and why we must act today.

To begin, there were several ambiguities in the original statute which have led to a tremendous amount of litigation. Courts have spent a great deal of time deciding what the intent of Congress was in enacting the legislation because Congress itself failed to be specific.

Mr. Speaker, this statutory ambiguity has cost us more than the expenses involved in litigation. It has cost us precious time otherwise needed and better spent in cleaning up toxic waste sites. Superfund should not be a litigator's dream. It should be a mechanism by which prompt cleanup is directed in a fair and efficient manner. The experience of the first 5 years of the statute has not always reflected this goal.

In this regard, I do think we have made some progress in this reauthorization. For example, significant progress has been made in settlement policy. The changes in this bill will help keep the litigation costs down and, more importantly, will reduce the time needed to commence site cleanups as parties find ways to resolve legal issues in ways other than time-consuming litigation. This is the type of action the program so desperately needs to encourage. This is why this bill is so important.

Indeed, in reviewing the experience of the past 5 years, it is important to note that not only have we had to contend with the problems attendant to beginning a new environmental program, but we have also had to suffer through some very disturbing and turbulent years of EPA mismanagement. Time that would have otherwise been better spent directing cleanups was consumed in internal and external agency investigations. Again, this is time we can no longer afford. We have to get on with the business of cleaning up the Nation's toxic waste sites.

As a Superfund conferee from the Judiciary Committee, I had a strong interest in a number of issues considered in the conference bill. One of the most critical issues relating to Superfund reauthorization is that of response action contractor liability. Indeed, the most workable program changes and the fairest and most efficient tax provisions become meaningless if no one is willing to undertake the essential job of cleaning up sites. The House bill made tremendous strides forward by addressing the liability problems faced by these cleanup contractors. The establishment of a uniform negligence standard, I believe, would have helped create a more certain and stable environment for cleanup contractors by assuring that liability for acts over which they had no control was not assigned to them.

The conference agreement did not go quite this far in this final version. Rather, the conferees chose to establish a Federal negligence standard and leave the question of response action contractor liability under State law to the States. Throughout the deliberations on this matter, it was my clear understanding that this provision of the conference report was based on the conferees strong hope that such an amendment to Superfund would induce States to deal with the question of liability at the State level.

Obviously, Mr. Speaker, without the necessary and proper changes in the liability standards for cleanup contractors, the most qualified and effective contractors will shy away from such work. Those left to participate will be the inexperienced contractors with little to risk in the event of a release. Such policy runs complete counter to what the—we all want—safe and prompt cleanup of sites.

Therefore, Mr. Speaker, although the conference bill does not go as far as I would like to see it go in addressing the problems of strict, joint and several liability in the case of response action contractors, I do feel it a step in the right direction. It is my hope that our colleagues at the State level will indeed note our concerns and examine their own tort law accordingly.

I want to also note the provision concerning citizens suits. The right of citizens to sue to protect their health is fundamental. This provision of the conference bill, which is based on a modified version of the House-passed bill, provides that Federal officials responsible for enforcing Superfund are subject to suit when they fail to perform mandatory actions required by the law. Further, a cause of action against any person in violation of any standard, condition or requirement of the act is provided.

Under the bill passed by the House, citizen suits were barred in cases where the President had commenced and was diligently pursuing either a court action under this act, a court action under the Solid Waste Disposal Act or an administrative order under this act. In the conference bill, the first two bars are maintained while the bar to suit in cases of an administrative order is deleted.

The conference bill further deletes a citizen suit provision for "imminent and substantial endangerment." I have consistently supported the rights of citizens to sue for imminent and substantial endangerment and was not persuaded by arguments that there is adequate overlap between Superfund and the Solid Waste Disposal Act provision for suits for imminent and substantial endangerment to protect citizens. I do, however, note that the action of the conference in no way impairs the rights of citizens to sue under other Federal or State law or common law.

Lastly, Mr. Speaker, I breathe a great sigh of relief that neither bill contained a Federal cause of action for personal injury and property damage. A proposed Superfund Federal cause of action was narrowly defeated in the House in the 98th Congress and overwhelmingly defeated in the House in this Congress. This body has consistently rejected expanding the Superfund statute to deal with legal rights aimed at compensation for damages arising out of injuries caused by the toxic substances involved.

Both Federal causes of action this body has considered and defeated with regard to Superfund contained extremely weak causal relationships between the actual disposal of the hazardous substances, the resulting exposure, and the asserted injury caused. Furthermore, the liability under such a cause of action would have been—in both instances—a codified standard of strict, joint and several. Under such circumstances, for example, a small business conceivably could be responsible for less than 1 percent of the hazardous waste at a particular site and, nevertheless, be made liable for up to 100 percent of the damages.

In sum, Mr. Speaker, I think this conference bill offers us the last, best chance to reauthorize this vital environmental law. While it is not perfect, it is workable and can be put into action. It accomplishes one of the most vital goals this body has had throughout its consideration of Superfund—namely, it helps reduce the time and expense required in the courtroom and leaves greater time and resources available to cleanup activities. We cannot afford to wait another year to renew this program. We must act now and I urge a "yes" vote.

Mr. KINDNESS. Mr. Speaker, I rise in support of this legislation to reauthorize Superfund. It is no secret that many of us on the conference committee and in the House have reservations about this bill. And there are many things that I'm sure many of us in this House would have done differently. But the time for such debate is long past.

There can be no denial of the seriousness of the problem or the lateness of the hour. We must have a bill now—even if it is imperfect. To delay any longer will mean that Congress has failed to protect the public health. Further debate and delay—however well intentioned and well placed—will not solve the problem of toxic waste. We must act and we must act now. There is no more time for delay. This, Mr. Speaker, is the reason I signed the conference report.

However, in so stating my belief as to the need for immediate action, I feel I must respond to statements made last Friday in the other body by the Senator from Vermont, Mr. STAFFORD. Although my interpretations differ significantly from his on a number of issues addressed by the conference, I will talk only about one—that of response action contractor liability.

In so doing, Mr. Speaker, I believe it absolutely critical that, for purposes of legislative history, the language of the statement of managers be viewed as the best and most accurate expression of the intent of the House and Senate on this matter. There can be no doubt that the language of the conference report is the best evidence as to what it is the Congress decided.

Mr. Speaker, I single out the issue of response action contractor liability for attention for several reasons.

First, I was an active member of the subconference which considered response action contractor liability. I attended all subconference meetings and took careful note as to their proceedings and results.

Second, the failure of the Congress to adequately and responsibly address the very legitimate concerns of the cleanup contracting community undermines the entire Superfund Program. The progress made in solving problems in other parts of the statute is, as a practical matter, rendered moot if responsible contractors refuse to do the work after enactment.

Indeed, Mr. Speaker, it may prove to be a pyrrhic victory to those who, regardless of motive, opposed the House position on response action contractor liability if, in fact, cleanups slow or discontinue as a result of the obvious and legitimate liability problems facing contractors.

The Senator from Vermont in his statement says that—

> The legislation does not affect in any manner liability imposed under State law, whether statutory or common, nor does it reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint and several.

I am afraid, Mr. Speaker, that I must take strong exception to the Senator's interpretation evidenced by this statement and several others pertaining to response action contractors. While I agree with the Senator that this provision does not affect liability imposed under State law, I must register severe disagreement with his interpretation as to the conclusions by the Congress concerning State liability standards. I note for the RECORD, Mr. Speaker, that the statement of managers says:

> Liability which might arise under non-federal laws, however, is untouched by the conference substitute. The existing standard of liability for responsible parties under CERCLA is maintained. The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees *urge* States to take note of the Federal standards and review their own standards of liability. (emphasis added).

Clearly, the statement of managers does reflect a strong realization that response action contractors are differently situated than responsible parties in the Superfund process. It was in light of this realization that the House passed a uniform negligence standard that took the cleanup contractors out of the Superfund chain of liability except in those cases where the contractors own negligence caused the release and resulting injury and damage. The entire reason the House conferees decided to reluctantly agree to a nonpreemptive Federal negligence standard was because it was made clear that statement of managers language would stress the importance of this concept and express the hope of the Congress that States would deal with the question of response action contractor liability within their own borders, taking note of the new Federal standard.

Given the extraordinarily clear meaning of the statement of managers, I am uncertain as to how the Senator from Vermont reached the conclusions voiced in this statement of last week. The Senator states that this new Federal standard of liability does not—

> * * * reflect a conclusion by the Congress that such laws should be changed to establish a rule of liability other than strict, joint and several.

However, Mr. Speaker, the statement of managers states:

> The conferees hope that this amendment will induce States to deal with the question of liability within their own borders. The conferees urge States to take note of the Federal standards and review their own standards of liability.

The Senator from Vermont also states that:

> This bill reflects a change in the Federal liability under Superfund. But it is a change that was only reluctantly agreed to and then only after it had become clear that if, in fact, insurance were unavailable, all of the reauthorization efforts would have been for naught. It is a reality in the United States, unlike many other industrialized nations, that businesses refuse to expose themselves to what many would consider the ordinary risks of free enterprise. Businesses and their managers view liability insurance as a precondition to entering or remaining in markets including, unfortunately, Superfund responses. Thus, the Congress was in a sense held hostage by the threat that insureres would refuse to provide coverage. There really was no choice but to pay the ransom and change the Federal standard.

Again, I agree, in part, with the Senator from Vermont—at least to the extent that there can be no doubt that all the reauthorization efforts would be for naught if the liability issues concerning response action contractors were not addressed. However, I must once again respectfully disagree with his interpretations of the conference agreement. Specifically, Mr. Speaker, the risks being assigned response action contractors are not what the Senator describes as the "ordinary risks of free enterprise." These are extraordinary risks because of the draconian impact of strict, joint and several liability. This liability standard, is, in reality, a near absolute standard given the extremely limited defenses available in the statute.

Risk under such a scheme makes it impossible to insure against because it cannot be predicted on any realistic basis. The reason, Mr. Speaker, that few industrialized nations suffer from the insurability and liability problems we suffer from in the United States is that new worship at the altar of strict, joint and several liability with the same fervor that many in this country do.

If anyone or anything is being held "hostage" under the current liability scheme, it is the health of the American public, which is being jeopardized by the extremely litigious nature of Superfund—litigation which drags out the time otherwise better spent cleaning up the sites which pose a danger to the public health.

Indeed, I believe the Senator from Vermont misses the point in examining Superfund liability of response action contractors. Because they are in a fundamentally different position than responsible parties and because responsible parties will always remain liable for the injuries and damages their wastes create, it makes little sense to ask those who cleanup the sites to "bet the store" everytime they cleanup a site.

If cleanup contractors are negligent, they continue to be liable for the injuries and damages caused by their actions. Nothing is gained by holding them strictly, jointly and severally liable—especially if, as in the Senate bill, there is mandatory indemnification of strict liability claims by the Federal Government. Contractors gain no further incentive to be careful under such a system. Further, holding them liable under strict, joint and several liability makes little sense since cleanup contractors do not select the remedies.

Permit me, Mr. Speaker, to digress a bit further. Many cleanup contractors are small companies. Although there are many large construction and engineering firms involved in the process, many of the ancillary services provided a prime cleanup Contractors are provided by small businesses—small engineering firms, small surveying and mapping firms, and small architectual firms. They are operated by people who have spent their entire lives building and contributing to society. As is the case in most small businesses, the owners have most of their financial security tied up in their businesses.

I Ask you, Mr. Speaker, is it fair to ask these people to bear the personal financial responsibility for the acts of others—especially on a retroactive and near-absolute basis and especially when the responsible parties are still on the liability hook? Remember, Mr. Speaker, that these small businesses will still remain on the liability hook if they are negligent.

Finally on this point, Mr. Speaker, I ask this: If the liability standard for cleanup contractors remains as is and the most competent and innovative firms are driven away from the job, then who will pioneer the new technologies necessary to permanently rid us of these problems? What signal do we send those who invest their resources—or those of their share-holders—in new cleanup technologies? If investment in research and development on new technology leads to liability for the acts of others—on a retroactive, near-absolute, joint and several basis—then who in their right mind is going to develop such technology? For a third time, Mr. Speaker, I remind the Members that cleanup contractors do still and will continue to remain liable for their negligent acts—that is, those acts that they negligently undertook pursuant to their cleanup activities.

Examining the Senator's statement a bit further, I note he also states:

> States, however, do have other choices. The insurance industry is regulated at the State level and therefore can be compelled to cooperate. It is possible to require assigned risk pools, regulate premiums, authorize new forms of self-insurance or otherwise respond to the insurance dilemma in some fashion other than altering liability. Of course, some legislatures may well conclude that a change in liability is itself an appropriate response, but they must then confront the equally difficult question of whether a victim should bear the costs of an injury caused by the contractor and, if so, why. The real issue in these cases is not whether it is fair for the contractor to bear the cost of injuring another during the course of a cleanup, but whether it is fairer for the contractor or the victim to do so. A victim's only connection with the poisonous chemical is that he or she was injured; the contractor, in contrast, chose voluntarily and for profit to hold itself out as competent to perform safety tasks that were classified in advance by the Federal Government as among the most difficult and dangerous in the Nation.

The Senator states that State legislatures considering change in their liability laws will have to confront the question of who bears the costs of injury. He states that the only choice before the States will be between the cleanup contractor and the victim. I think again, Mr. Speaker, my friend from Vermont misses the mark with his interpretations.

This is not the case for several reasons. First, injured parties can recover damages from cleanup contractors if those injuries were caused by the contractor's negligent acts. Strict, joint and several liability is not the only basis upon which a lawsuit may be brought. Further, responsible parties—or polluters—continue to be strictly, jointly and severally liable for damages that occur to innocent citizens. Superfund has always been based on the principal that the "polluter pays." A negligence standard for cleanup contractors in no way undermines that concept.

Second, the gentleman from Vermont notes that contractors hold themselves out to be competent to perfrom the work they do. And on that basis, Mr. Speaker, they are fully willing to be held liable for the consequences of their negligent acts. But near-absolute liability assigns liability without regard to fault or competence. Further, cleanup contractors do not hold themselves to be competent for the actions of others in the Superfund liability chain. They can no more control the actions of other participants than any Member of Congress could. Yet, it seems that this is precisely what Senator for Vermont would have them do.

In short, Mr. Speaker, I believe Congress can do better than to render Superfund a process under which injured parties become judgment creditors presiding over the liquidation of thousand of innocent small businesses who in no way caused or created the liability being assigned them under the present system. Such a system, Mr. Speaker, is not fair—especially when responsible parties remain liable for the damages caused by their waste and especially since contractors remain liable for their negligent acts.

I will close, Mr. Speaker, with one final comment. For brevity's sake, I will not address the remarks made by the Senator as to the idemnification portion of the conference report except to say that, again, these do not in every instance reflect the statement of managers. I which it were otherwise because I have the greatest respect for the Senator from Vermont. I would note for the record that the statement of managers makes a clear statement that indemnification limits and deductibles should not be set by the Government at such levels as to make the indemnification meaningless. This is very important, Mr. Speaker, because without the proper indemnification levels, the program will not move forward. I strongly urge those responsible for such indemnification agreements to be keenly aware of this critical fact.

Mr. FISH. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL], and I yield back the balance of my time to the gentleman from New York [Mr. LENT].

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that I may be permitted to reserve the 3 minutes.

The SPEAKER pro tempore (Mr.

Panetta). Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. Sikorski].

(Mr. SIKORSKI asked and was given permission to revise and extend his remarks.)

Mr. SIKORSKI. Mr. Speaker, the Superfund legislation before us today is based on a fundamental premise: Americans have the right not to be poisoned by uncontrolled hazardous chemicals. I was proud to introduce a provision of this legislation which establishes an even more basic premise: Americans have the right to know whether they are being poisoned by these chemicals. Community right-to-know is just that: a guarantee that communities will know exactly what kind and exactly how much dangerous chemical waste is released into their air, water, and land. Such a guarantee is essential to the health of our children and our communities.

When it comes to toxic chemicals, ignorance is anything but bliss; 5,700 toxic chemical accidents a year expose thousands of Americans to life and health threatening toxic substances. Millions more Americans are exposed—24 hours a day, 7 days a week—to the routine discharge of anything but routine chemicals.

The Superfund legislation before us today is an acknowledgment that hazardous waste is a national problem. It is also a community and a personal family problem. That's why CRTK is important.

The names of communities which have been devastated by hazardous waste—Love Canal, Times Beach, Woburne—are familiar to us all. But the names of children threatened by cancer, birth defects, genetic disorders and other chronic health effects are genarally unknown. They are protested by CRTK. All the vigilance of concerned and responsible parents cannot foresee this threat without CRTK.

Parents will now know the dangers confronting them and their children. The toxics released in their neighborhoods, the water they drink, the soil of their kid's playground, CRTK ensures that parents know the enemy they face. Hazardous wastes are a silent killer, slowly and incessantly wielding their lethal axe over years of exposure. CRTK is the first step in fighting this killer, identifying it.

The chemical industry is an essential part of our economy, many of our communities, and the Edgar-Sikorski CRTK provision is good for industry, and has already worked well in two States—New Jersey and Maryland. The provision sets reasonable thresholds which will not affect small businesses with minimal emissions. Reporting requirements will not be excessive; probality less than a one-page report.

Community Right-To-Know lifts the veil of ignorance which has created mistrust and antagonism between community members and local industry. Community Right-To-Know will guarantee open access to information, dispelling the atmosphere of mistrust and replacing it with one in which community members and industry can openly cooperate in addressing the problems of toxic waste. Safe companies will be rewarded by a community knowledgeable of their good record in handling hazardous products, and unsafe companies will have a powerful incentive to clean up their act.

Superfund is the antidote to restore the health of our communities, and Community Right-To-Know is the shot in the arm to prevent toxic waste problems from developing.

For this medicine to work, it cannot be sugar coated. Disclosure of hazardous waste emissions—both routine and emergency, acute and chronic—must be swift and complete. The requirements for disclosure are clearly defined. These requirements must be strictly and strenuously enforced.

I urge support for the Superfund bill, not only because we need to clean up hazardous waste-sites which threaten the health of our children and communities, but becasue we must allow parents and local communities to begin the process of preventing hazardous, cancer-causing releases.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. Gray].

(Mr. GRAY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. GRAY of Illinois. Mr. Speaker, now that we have passed Superfund legislation, current scientific ability to assess the political relationship of hazardous substances in the environment and possible human health effects is limited. This is particularly true where science must extrapolate from one chemical to a mixture of many chemicals and from average population health data to specific individuals or classes of individuals. Consequently, the health studies provided for in the section which has evolved from section 116 of the House bill and section 121 of the Senate bill should not be used to establish a basis for determining individual legal rights or remedies or those of any class of individuals. Rather, these health studies should be used for the purposes of the health authorities section; that is, to determine whether a more detailed understanding of the relevant toxicology, or local epidemiology or etiology is needed or whether some precautionary action should be considered for potentially exposed individuals.

This is the purpose for which these health studies are authorized. This is the purpose to which these health studies are suited. The use of this data for purposes other than those identified in the bill would be counter to the intention of the Congress. I would urge those who would use this data to do so with a recognition of its preliminary nature and scientific limitations, remembering the purposes for which it is authorized here.

Mr. Speaker, I am proud to have INMONT Division of BASE Corp. in my district at Salem, IL, and wanted to make these few remarks that hopefully help keep the purposes and limitations of health study data in perspective while carrying out the good provisions of the bill.

Mr. ROE. Mr. Speaker, may I inquire of the Chair how much time I have remaining?

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. Roe] has 11¼ minutes remaining.

Mr. ROE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania [Mr. Edgar].

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

Mr. EDGAR. Mr. Speaker, we are about to take an historic step today by providing the American people not only with a comprehensive and expanded toxic waste cleanup program, but by finally providing them with the fundamental right to learn about the true risks from their exposure to toxic chemicals. This legislation, which contains the Emergency Planning and Community Right-to-Know Act of 1986 will, at long last, unveil the ways in which toxic chemicals are handled in this country and provide the public with the information they need and deserve to learn about the hazards of toxic chemicals.

I am proud to have successfully sponsored an amendment to the House bill last year that established the philosophical foundation for the proposal before us today. The Edgar amendment made it crystal clear that the community's right-to-know extended not just to those substances that pose an immediate threat to human health, but also to chemicals that can only be called "slow killers;" chemicals that cause cancer, birth defects, liver disease and other chronic illnesses. The Edgar amendment sets the stage for the legislation before us today.

As one of the principal architects of the Emergency Planning and Community Right-to-Know Act of 1986, I consider it important to make several remarks clarifying and amplifying the congressional intent underlying this important new program.

The heart of the Federal Right-to-Know Program is its reporting requirements, which are intended to provide a comprehensive picture of the community's and Nation's exposure to toxic chemicals. As the Environmental Protection Agency, the States, and localities implement and oversee this program, they should be guided by several general principles.

First, Congress recognizes a compelling need for more information about the Nation's exposure to toxic chemicals. Until now, the success of regulatory programs such as the Clean Air Act, the Resource Conservation and Recovery Act and the Clean Water Act has been impossible to measure because no broad-based national information has been compiled to indicate increases or decreases in the amounts of toxic pollutants entering our environment. The reporting requirements, and the toxic chemical release forms in particular, are intended to provide this national information. As a result, the reporting provisions in this legislation should be construed expansively to require the collection of the most information permitted under the statutory language. Any discretion to limit the amount of information reported should be exercised only for compelling reasons.

A second major principle of this program is to make information regarding toxic chemical exposure available to the public, particularly to the local communities most affected. For too long, the public has been left in the dark about its exposure to toxic chemicals. Information that has been available under existing environmental statutes, such as the Clean Water Act or the Clean Air Act, has been difficult to aggregate and interpret, which has made it difficult, if not impossible, for the public to gain an overall understanding of their toxic chemical exposure. Consequently, the reporting requirements should be construed to allow the public the broadest possible access to toxic chemical information in formats that are straightforward and easy to understand.

Third, we intend to limit the scope of trade-secret protection afforded to those handling toxic chemicals. The economic interests of those required to report under these provisions may be affected by the reporting requirements. However, we consider the public's right to know about toxic hazards of such paramount importance that the trade-secret provisions in this act narrowly circumscribe the trade secret protection afforded firms covered by the reporting requirements. As section 322(a) makes clear, the only information entitled to trade-secret protection under this act, and only under specific circumstances, is the specific chemical identity. All other information, such as information concerning the amounts of chemicals entering the environment, is not entitled to protection and is available to the public regardless of the impact of disclosure on particular firms.

The final major principle of the Federal Right-To-Know Program is that this program does not preempt State or local right-to-know initiatives. The Federal program is intended to establish a floor which will require the basic information thought necessary for reporting across the country. However, Congress preserves the right of any particular State or locality to require the disclosure of additional information, the right to limit the availability of trade-secret protection, or to take any other steps to implement its own community right-to-know program.

Guided by these general principles, the reporting requirements in this act set forth the precise means by which this program shall be implemented. Although the statutory language and accompanying conference report describe these provisions, several additional clarifications are required.

First, the facilities required to provide material safety data sheets [MSDS's] under section 311 shall be the same as those facilities required to prepare or have available MSDS forms under regulations of the Occupational Safety and Health Act of 1970.

If those regulations are amended to include additional firms or chemicals covered or to add reporting requirements, the scope and content of the MSDS requirement in this act will change accordingly. However, section 311 is not entirely governed by the regulations developed under OSHA. In particular, the trade secret provisions of section 322 of this act would be unaffected by any changes made in OSHA's trade secret regulations, except to the extent OSHA determines under what conditions a chemical identity is not readily discoverable through reverse engineering—see section 322(c). In addition, any State or local community right-to-know requirement regarding MSDS's shall not be preempted, regardless of the preemptive affect of OSHA regulations on State or local worker right-to-know requirements. Section 321(b) makes it clear that such State or local community right-to-know laws enacted after August 1, 1985, shall use the Federal MSDS's form, but supplemental information may be required at the discretion of the State or localities.

Second, although the reporting requirements under section 312 are designed to balance the need for the community to have a comprehensive picture of toxic hazards against the need to limit the burden on the firms covered by this provision, this balance should not be construed to limit the availability of detailed tier II information to the public. Section 312(e)(3) makes it clear that tier II information is to be promptly provided to the public, upon request, as long as the information is in the possession of the local emergency response committee, the State emergency response commission, or other members of the public pursuant to requests made under section 312(e) (1) and (2), or section 312(e)(3)(C), or if the information pertains to a hazardous chemical stored in an amount in excess of 10,000 pounds. The State commission and local committee may not, under any circumstances, deny such a request for information. Furthermore, a request from the public, although it must be made with respect to a particular facility, need not contain a detailed list of hazardous chemicals. A request is sufficient if it asks for information regarding all hazardous chemicals at the facility.

Requests made by the public under section 312(e)(3)(C) for tier II information need not provide a detailed justification for the information. Only a general statement of need is required. The public may satisfy the statement requirement by indicating, for example, that the information is needed for research or needed for emergency planning or needed for toxic exposure assessments. The statement requirement is not intended to be a hurdle to public access to tier II information.

In addition, Congress intends that State commissions and local committees will presume that public requests under section 312(e)(3)(C) should be granted. Because Congress intends this act to provide greater public access to hazardous chemical information, requests under section 312(e)(3)(C) should be denied only when there are extraordinarily compelling reasons to do so.

The last clarification with respect to section 311 and 312 relates to EPA's authority to set thresholds for reporting under either of these sections. It should be noted that the act establishes no thresholds for reporting under sections 311 and 312, which reflects Congress' judgment that the public's right-to-know should presumptively extend to quantitive and qualitation information concerning all hazardous chemicals regardless of the amounts stored. Any decision by EPA to set thresholds under section 311 or 312 should be based on findings that the information which would no longer be available would not aid Federal, State, or local officials or the public in understanding actual or potential hazardous chemical exposure. In setting thresholds, EPA shall not consider the burdens on the facilities subject to the requirements of sections 311 or 312. Congress, by crafting these provisions with no thresholds, has determined that the right-to-know considerations outweigh the potential burdens on the facilities subject to these requirements. Only in the limited circumstances in which no right-to-know objectives would be served by disclosure of particular information should EPA set thresholds under these provisions.

Third, several clarifications need to be made with regard to section 313. Initially, it should be noted that if a form is required for a particular toxic chemical under section 313, the releases reported must include both routine releases and emergency releases which could require reporting under section 304. Reporting under section 304 does not relieve a covered facility from reporting such a release under section 313. The toxic chemical release form is intended to provide an aggregate estimate of releases during a calendar year and, as a result, must include all releases that may also require reporting under section 304.

Section 313(b) specifies the facilities covered by the toxic chemical release reporting requirements, but also provides the Administrator with the discretion to include additional facilities either by specifying additional SIC codes covered by the section—section 313(b)(1)(B)—or by designating specific facilities or classes of facilities to be covered—section 313(b)(2). Congress designated facilities in SIC codes 20-39 only as a starting point for this reporting requirement. The Administrator is expected to exercise his discretion to make additions if the additions would add SIC codes or particular facilities or classes of facilities which manufacture, process, or otherwise use toxic chemicals in a manner similar to those industries in SIC codes 20-39. The principal consideration is whether the addition would meet the objectives of this section to provide the public with a complete profile of toxic chemical releases. The fact that Congress applied the reporting requirement to those in the manufacturing sector should not be considered a limiting criteria in the Administrator's determination.

It is also important to clarify the intent of Congress in establishing thresholds for reporting under this section. Users of toxic-chemicals must report under this section if they handle in excess of 10,000 pounds of a toxic chemical over the course of a year. The thresholds for manufacturers and processors decreases over a 3-year period from 75,000 pounds per year to 25,000 pounds per year. These thresholds were designed to obtain reporting on both a substantial majority of the Nation's toxic chemical releases and to obtain reporting from a large number of firms. These thresholds reflect Congress' judgment that such thresholds appropriately balance the need for information against the burden on facilities required to provide such information. The EPA is authorized to revise these thresholds, but only if such revised thresholds continue to obtain a substantial majority of total releases. Any determination by EPA regarding the ability of revised thresholds to obtain reporting on a substantial majority of releases, especially if such revised thresholds raise the statutory levels, must be based on verifiable, historical data which presents a convincing case that the statutory levels must be revised.

With respect to the contents of the toxic release form, estimates of releases into each environmental medium must be provided. This shall include any releases into the air, water, land as well as releases from waste treatment and storage facilities. This should include all releases of toxic chemicals into surface waters whether or not such releases are pursuant to Clean Water Act permits. Similarly, all toxic chemicals dumped into land disposal facilties must be reported whether or not such facilities are regulated under the Resource Conservation and Recovery Act and whether or not such facilities are onsite or offsite. Estimated releases into the ground water, including spills or leaks from land disposal facilities, must also be reported.

This is a new Federal initiative, and I recognize the desire of some of my colleagues to move ahead cautiously to ensure that burdens imposed on industry are not excessive. Frankly, my concerns rest with the families that live in the shadow of these chemical and manufacturing plants. I have put myself in their shoes and have fought for a program that looks after their needs. This legislation gets us well on the path to the full disclosure they deserve.

The Emergency Planning and Community Right-to-Know Act of 1986 will offer the public and policymakers a vital opportunity to understand the magnitude and scope of toxic chemical exposures. A large measure of public concern over toxic chemicals in recent years has stemmed from inadequate, incomplete or nonexistent information. This lack of information has led to fear, misguided policies and misplaced priorities. This act is intended to provide a comprehensive view of toxic chemical exposure and, hopefully, provide a basis for more sensible and effective local, State, and national policies.

Mr. LENT. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio [Mr. OXLEY].

(Mr. OXLEY asked and was given permission to revise and extend his remarks.)

Mr. OXLEY. Mr. Speaker, I rise today in somewat reluctant support of the conference agreement on H.R. 2005, the Superfund Amendments of 1985.

Mr. Speaker, as a member of the Energy and Commerce Committee, I know that a great deal of effort has gone into reauthorizing Superfund over the past several years. Energy and Commerce conducted extensive hearings on the subject, and finally our committee approved the House version of Superfund legislation well over a year ago. The other committees with jurisdiction also reported legislation, and, as we all know, the House passed its bill last December.

While I voted in favor of the bill at that time, I was not pleased with the bill on several accounts. Likewise, while I intend to support the conference report, I am not totally pleased with the legislation, nor with some of the precedents I believe it sets.

First of all, the size of the fund. The Administrator of EPA has stated from the beginning that the Agency could effectively use only $5.3 billion over 5 years. The House-passed bill would have nearly doubled that figure to $10.4 billion, and the conferees have agreed to a funding level of $9 billion. I wholeheartedly agree that the current Superfund funding level of $1.6 billion is inadequate, but I doubt that simply throwing money at the problem of cleaning up our hazardous waste sites will do much to correct it. Similary, the Administrator fears that providing excessive funding for the program could invite cost overruns and other wasteful practices.

I also have some concerns regarding the method the conferees have chosen to finance Superfund. I share the concerns of many in the Northeast and Midwest with regard to the "tax differential" placed on imported oil products, because these regions are more dependent on oil imports, especially of heating oil. I am pleased that the conferees have not adopted a "VAT" to finance Superfund, but I am concerned that the imposition of another profits tax—on top of the new corporate minimum tax enacted under the tax reform bill—may have adverse effects on many of this Nation's businesses.

However, notwithstanding these concerns and others, I intend to support this conference agreement. We all know that there are very few perfect pieces of legislation passed by this body, and this bill is not perfect. However, I believe it is the best bill we can get, especially at this late date. The conference agreement includes ambitious cleanup standards, a reasonable and enforceable cleanup schedule, a requirement to conduct health assessment at Superfund sites, mandatory public participation in all significant cleanup decisions, a comprehensive community-right-to-know provisions, and a new provision to clean up leaks from underground storage tanks. This is a strong bill that will greatly improve the Superfund Program.

Mr. Speaker, I am aware that some in the administration have threatened to veto this important legislation. I believe that this position should be reexamined. We need a strong and workable Superfund Program so that EPA can move forward with cleaning up our Nation's hazardous waste sites. A veto will only push us back to square one, where the whole process would begin again next year. Absent a concrete suggestion from the administration on how to finance an increased Superfund Program, I believe we should pass this conference report today and get on with the cleanup.

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Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. STUDDS asked and was given permission to revise and extend his remarks.)

Mr. STUDDS. Mr. Speaker, I rise in strong support of the conference report on the Superfund Reauthorization Act of 1986.

The stalemate that has brought the Superfund Program to a year long standstill has finally been broken. It should not have taken this long; the bill before us should—in my judgment—be somewhat stronger, but this measure is still the most important piece of environmental legislation considered by Congress this decade.

After we act today, the Superfund bill must survive a final test—a threatened veto from President Reagan. The President's decision on this issue will demonstrate quite clearly where the priorities of this administration lie. The President has lavished more than $1 trillion on the Pentagon these past 5 years; the question he faces now is whether to obligate less than one-hundredth of that amount to clean up toxic waste sites around the country. Unlike the Defense budget, the majority of the funds for hazardous waste cleanup will come not from the general taxpayer, but from industries that are directly or indirectly responsible for the generation of toxic waste.

There is no truly or totally fair way to finance a hazardous waste cleanup program. With respect to many waste sites, there was no villain, no lawless or reckless polluter, no midnight dumping of poison in a landfill or stream. The hazardous waste problem developed primarily because of ignorance, laziness, and indifference, characteristics we can no longer afford. The legislation before us today spreads the burden of financing waste cleanup in a manner that is about as fair as possible; and there can be no valid excuse for vetoing this bill.

The American people were ready years ago to declare war on toxic waste. Members of both parties in Congress are prepared to join that battle. The question now is whether President Reagan, the Commander in Chief, will lead the fight or—as his recent statements indicate—he will choose, instead, to surrender.

As those of use who were accorded the character-building and spirit-strengthening honor of serving as conferees on this legislation can attest, the bill before us is a compromise. It gives EPA the legal and financial tools required to increase dramatically the pace and completeness of hazardous waste site cleanups around the country. But it does not dictate to EPA how it must proceed; nor does it give either the public or industry much opportunity to influence the process through litigation. From today forward, the responsibility for making the Superfund Program work will rest—at the insistent request of EPA, itself—almost solely with EPA. It will be the responsibility of Congress to make certain that EPA's performance is a match for the many promises we have heard during the months of negotiation on this bill.

I am particularly pleased by the inclusion in the conference report of provisions that I helped in some measure to develop to—

Restore the right of commercial fishermen and others to sue under Federal law for loss of income resulting from violations of the Marine Protection, Research and Sanctuaries Act [MPRSA];

Require that Superfund sites be cleaned up to an extent that will guarantee the protection of human health and the environment;

Establish a legally mandated schedule for the initiation of cleanups at hazardous waste sites;

Require EPA to periodically review the adequacy of cleanup at sites for which a complete and permanent cleanup remedy is not technologically or economically feasible;

Establish a program for rapid cleanup of spills from leaking underground petroleum storage tanks; and

Require that funds collected from

polluters for natural resources damage at a site be used for the repair and restoration, or for the acquisition of comparable resources, if possible, at the site.

With respect to the first of these issues, I call Members' attention to the fact that the conference report adopts an amendment to section 106 of the MPRSA that is intended as a new savings clause for the statute. As original House sponsor of the amendment in the context of H.R. 1957, the Ocean Dumping Act Amendments, I am particularly pleased that it has been included here. The purpose of the amendment is to overturn a series of cases that have broadly construed the preemptive reach of the act and the Clean Water Act. The amendment is intended to make clear that Congress rejects these interpretations and intends that the preemptive reach of the MPRSA be narrowly construed.

The amendment establishes the general rule that State laws, standards or limitations are not preempted by the act. The amendment also establishes that remedies for damages under other Federal law, including maritime tort law, are not preempted where there is noncompliance with an ocean dumping permit. Not only does this amendment overturn judicial decisions broadly construing the preemptive reach of the act, but it creates a presumption against preemption.

This presumption against preemption requires a correspondingly strict, narrow construction of the reach of section 106(d), which prohibits States from regulating ocean dumping. Where there is a potential conflict between a State authority governing environmental quality, public health or welfare and the prohibitions in section 106(d), the presumption favors the continuing validity of State law. Similarly, enactment of the MPRSA is not to be interpreted as revoking by implication other Federal statutes. Where, for instance, the National Environmental Policy Act [NEPA] constrains Federal decisionmakers to consider environmental factors, NEPA continues to apply with full force to the MPRSA. Similarly, where the Coastal Zone Management Act [CZMA] requires Federal activities, permits and licenses to be consistent with approved State coastal programs, the CZMA applies with full force to the MPRSA.

I would like to turn now to a discussion of an issue of particular importance to southeastern Massachusetts, and to the integrity of the Superfund legislation, as a whole. This is the issue of cleanup standards.

The conference report states that any remedial action selected or required under sections 104 or 106 must—at a minimum—assure protection of human health and the environment. The general standard of "protection of human health and the environment" is the same standard that applies under the Solid Waste Disposal Act. This is the standard that must be met by any Superfund cleanup.

Under the new law, EPA will be required to specify the level of cleanup needed to protect human health and the environment and then prescribe what actions must be taken to meet this standard. The Agency shall not factor the costs of implementing the response into its analysis. The costs of compliance will only become a factor in determining which of several equally effective actions could meet the required standard of protection.

The requirement to "protect human health and the environment" is applicable both with respect to the degree of cleanup of any hazardous substance, pollutant or contaminant already released into the environment, and to the control of further releases.

Under certain circumstances, the legislation permits the use of a regulatory process for setting alternative concentration levels [ACL's] of contaminants. This process is being developed by EPA under the Resource Conservation and Recovery Act [RCRA]. As currently implemented by EPA, the ACL process permits the owner or operator of a RCRA facility to demonstrate that some alternative level of contamination does not threaten human health and the environment.

The conference report would permit the ACL process to be used when no other previously established standard or level of control; for example, water quality criteria applies to the hazardous substance, pollutant, or contaminant at issue. If any other standard or level of control is legally applicable, or relevant and appropriate, establishment of a separate ACL would not be allowed.

A second condition on the use of ACL's is that it must be based on a point of human exposure that is located no further than the boundary of the Superfund facility. The facility boundaries are to be defined at the conclusion of the remedial investigation and feasibility study [RI/FS] performed for the site.

"Facility" is defined under Superfund as the place where hazardous substances, pollutants, or contaminants have come to be located. The major purpose of an RI/FS is to determine the nature and scope of all contamination existing at, or caused by, a Superfund site. At the end of an RI/FS, EPA shall define the precise area, or "facility", where hazardous substances, pollutants or contaminants are located. The remedial action will then clean up the entire facility in a manner, and to an extent, that will prevent future releases. Neutral or buffer zones which have not yet been contaminated cannot constitute a "facility" at the completion of the RI/FS.

There are three narrow exceptions to the rule that the point of assumed human exposure used to establish an ACL cannot exceed the facility boundary. All three exceptions must be met before a different point of exposure may be used.

The first is that the contaminated ground water at the site is known to feed into a source of surface water such as a lake or stream.

The second is that at the specific point where the ground water first enters the surface water, there is, or will be, no statistically significant increase in hazardous constituents, nor any accumulation of those constituents downstream. Such accumulation could occur downstream in either the water sediment or biota due to bioaccumulation. This second exception can only be satisfied if there is sufficient attenuation of contamination to provide for adequate dilution in the ground water so that it is not measureably increased at the first point where the ground water feeds into surface water.

The third exception is that a legally enforceable measure must be in place to preclude human exposure to contamination at any place between the facility boundary and the point of entry of the ground water into surface water. Enforceable measures mean measures that will remain in place as long as the waste remains hazardous.

The conference report states that whenever a remedial action involves the movement of hazardous substances, pollutants or contaminants offsite, they may only be transferred to a facility operating in compliance with sections 3004 and 3005 of the Solid Waste Disposal Act—or, where applicable, the Toxic Substances Control Act. These substances may be transferred to land disposal facility only if the President determines that the unit receiving the substances is not leaking into ground or surface water or soil, and all releases from other units at the facility are being controlled by a corrective action program. Although this provision does not require that a land disposal facility obtain a final RCRA permit before receiving Superfund wastes, it is intended to ensure that only secure facilities are chosen for hazardous waste disposal.

The conference report states that a remedial action which does not comply with a legally applicable, or relevant and appropriate standard, requirement, criteria or limitation may be selected only if the President makes one or more of several affirmative findings. These findings must be made on a site-by-site basis and are subject to the public participation requirements of the legislation.

The first finding is that the remedial action selected is only a phase in a longer-term remedial action, when the longer-term remedial action will complete cleanup at the facility and will meet all applicable, relevant and appropriate standards, requirements, criteria, or limitations. This provision gives the President some flexibility in conducting phases of cleanup, but does not permit indefinite delays in final cleanup.

The second finding is that compliance with a requirement would result in greater risk to human health and the environment than alternative options. This finding may apply to a few, relatively idiosyncratic sites where the application of available cleanup technologies would cause the release of hazardous substances, pollutants, or contaminants and would therefore pose a greater risk to human health and the environment than simply leaving the substances in place.

The third finding is that compliance with the requirements is technologically impracticable from an engineering perspective. Once again, this finding should apply only to a small number of situations where no technologies for hazardous waste treatment, destruction or disposal have been developed that would meet the requirements. In these cases, the conference report requires that sites must be periodically reviewed in order to permit the use of new technologies, once developed, to carry out the remedial action.

The fourth finding is that use of a method or approach other than one required under an otherwise applicable standard, requirement, criteria or limitation will achieve an equivalent standard of performance. This provision is designed for situations where a new or alternative technology not contemplated under existing regulations would work as well as the established approach. For example, RCRA might require placement of double liners at the bottom of land disposal facilities, but the hazardous substances, pollutants, or contaminants at a Superfund site may be susceptible to a new treatment technology that solidifies or neutralizes them in place. If the alternative technologies will prevent the migration of any hazardous constituents into ground or surface water near the site, the alternatives may be used.

The last finding reflects a recodification of the policy in current law commonly known as fund-balancing. Under this provision, the President may—if absolutely necessary—select a remedial action that does not meet Superfund cleanup standards. This option is only available if the President otherwise finds that there will not be enough resources left in the fund to respond to sites posing more immediate and severe threats to public health and the environment. Fund-balancing should be invoked only with full and readily apparent justification, and only where there is an irreconcilable conflict between the cost of a complete cleanup and the fund's ability to address sites posing much more serious hazards. Any use of this option should be accomplished by a full analysis of the manner in which the President evaluated the relative hazards at the sites in question. It is important to note that where the money to pay for a remedial action is provided by both the Federal trust fund and a private responsible party or parties, the fund-balancing finding shall apply only to the trust fund's share of the costs.

In closing, I want to pay particular tribute to the members of the Superfund conference committee on both sides of the Capitol who worked to inject at least a fair measure of integrity and spine into the final product. I believe that the conference report provides a solid basis for progress in hazardous waste cleanup over the next 5 years. It is a major accomplishment for this Congress and for the committees involved, and I am both thankful—and immensely relieved—that it is, the President willing, about to become law.

Mr. Speaker, I would like to engage in a colloquy with the gentleman from Ohio relating to natural resource assessments under these amendments. Is it the gentleman's understanding that the conferees have agreed that, as a general rule, the Superfund shall be available for natural resource damage claims but that, in any given year, the President retains the authority not to approve and certify such claims if public health related claims require all available funding?

Mr. ECKART of Ohio. If the gentleman will yield, yes, that is correct.

Mr. STUDDS. Is it also the gentleman's understanding that the prohibitions on the expenditures from the fund apply only to claims for natural resource restoration, and do not apply to the financing of natural resource assessments?

Mr. ECKART of Ohio. Yes, that is my understanding.

Mr. STUDDS. Mr. Speaker, I thank the gentleman for his cooperation.

Mr. ROE. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MINETA].

(Mr. MINETA asked and was given permission to revise and extend his remarks.)

Mr. MINETA. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of the conference report. The American people are entitled to a safe environment. They expect this Government to protect them from toxic and hazardous wastes, and we must fulfill that expectation.

Yet, over the last several years, the Superfund Program, if it has progressed at all, has moved slowly and haltingly toward its goals.

The bill before us today is not perfect. Many parts of it could be better, and I believe we will be back here in a year or two to tighten up this law even more. Yet it is a bill we must pass this session.

There are several sections of this bill I would like to discuss in more detail.

Included in the conference report is a provision that the Environmental Protection Agency must give high priority to sites that have contaminated drinking water supplies. This provision is taken directly from H.R. 3082, a bill that I introduced last year.

HEALTH STUDIES

Another important provision involves health effects studies and toxicological research. This important provision is drawn from many bills, including H.R. 3083, another bill I introduced.

The 1980 Superfund law recognized that evaluation, prevention, and treatment of the adverse health effects caused by toxic waste exposure was the ultimate—and primary—goal of the Superfund Program. That law created the Agency for Toxic Substances and Disease Registry [ATSDR] to carry out these crucial functions. Unfortunately, that mandate was actively sabotaged by the administration from the beginning. The Office of Management and Budget [OMB] refused to release Superfund money in order to set up ATSDR until it was sued by an unusual and commendable coalition including the Chemical Manufacturers' Association and the Environmental Defense Fund. Even after a court order set up the agency, OMB starved it of funds to do a credible job on the growing problems it was designed to address.

A major goal of the Superfund Amendments and Reauthorization Act [SARA] is to make Superfund's health authorities, and the Agency for Toxic Substances and Disease Registry, meaningful realities. The legislation accomplishes this goal in two ways—first, by guaranteeing substantial increases in funding and, second, by spelling out in precise and unequivocal terms what we expect ATSDR to do.

The most important, nondiscretionary duties imposed on ATSDR—in consultation with the Environmental Protection Agency—are the requirements that toxicological profiles be prepared for the most hazardous substances found at Superfund sites and that health assessment studies be conducted at all sites on the National Priorities List. The legislation establishes strict deadlines for these requirements, and the agencies' failure to meet any deadline would be subject to immediate citizens' suits under section 310 of the act.

The guiding principle that should affect the preparation of both toxicological profiles and health assessment studies is that the agencies should aggressively gather as much information as is reasonably available within the mandated timeframes, issue the profile or assessment on schedule, and then update or revise it as necessary. None of the supplemental requirements of the legislation—including, for example, the requirement that profiles (as opposed to assessments) be subject to peer review should be used as an excuse to delay issuance of the information required within the timeframes required.

The required elements of a health assessment study include: First, information necessary to ascertain the magnitude, scope, and duration of the exposure of individuals to the hazardous substance or substances at issue—including the source and degree of ground or surface water contamination, air emissions, and food chain contamination; second, an identification of all those in the community who may be exposed to the release of hazardous substances; third, toxicological and epidemiological evaluations of the impact of the exposure on affected individuals; and fourth, any necessary medical testing on individuals.

These elements are not intended to be an exclusive list and ATSDR and EPA should explore additional areas and gather more information where appropriate. We intend that the agencies retain maximum flexibility and discretion to go beyond the basic elements required by the legislation in developing useful and complete health assessments, although the minimal requirements and deadlines are nondiscretionary and fully enforceable through the citizens' suits provisions.

The legislation provides that if a health assessment indicates a significant risk to human health, the President shall take such steps as are necessary to eliminate or substantially mitigate such risk. The risks contemplated by this provision include both actual and potential, acute and chronic health effects. The steps which must be taken to eliminate or prevent such risks include, but are not limited to, the provision of alternative drinking water supplies or the temporary or permanent relocation of individuals. We intend to give the President maximum flexibility to take whatever action may be necessary to eliminate or prevent the risk as quickly as possible. In many instances, provision of alternative household water supplies may be the most effective solution, but in some circumstances, relocation may be the only effective alternative. In addition to the steps specified, other actions—such as the decontamination of soil—may prove most effective in fulfilling the primary goal of eliminating significant risk.

In the context of considering what steps to take to eliminate or prevent actual or potential adverse health effects, the legislation permits ATSDR to consider additional information on the risks to the potentially affected population from all sources of hazardous substances, including known point or nonpoint sources other than the facility in question. The purpose of this authority is to enable the agency to fully evaluate the most effective steps to eliminate or prevent adverse health to those studied in the assessment, ATSDR or EPA may need to take steps under other provisions of law to deal with such contamination. The provision is not intended to require a comparative risk assessment, or preclude or delay action while any or all other sources of contamination are studied.

Similarly, the legislation requires that whenever ATSDR determines to conduct a full scale or other study of health effects for selected groups of affected individuals, the letter of transmittal of such study shall include an assessment of risk factors, other than the release, that may be associated with any disease discovered, if such risk factors were not taken into account in the design of the study. Once again, this provision is not intended to require a comparative risk assessment or the determination of all other possible risk factors before completion of the full-scale study. It is intended to permit observations regarding other political causes of the adverse health effects in order to assist those responsible for providing medical treatment to the affected population.

INDEMNIFICATION OF CLEANUP CONTRACTORS

The legislation grants the President authority to indemnify cleanup contractors if a series of threshold requirements are met. These threshold requirements are divided into two categories: those that must be met every time an indemnification agreement is signed under the act and those additional requirements that apply to agreements covering cleanup work done under contracts with private responsible parties, as opposed to Federal or State governments.

The general requirements applying to all agreements contain three components. First, the President must determine that the liability covered by the indemnification agreement exceeds, or cannot be covered by private insurance available at a fair and reasonable price. The President must further determine that such insurance is not generally available to competitors of the contractor. Any individual firm's inability to find insurance therefore cannot justify use of indemnification authority. Rather, the President has authority to grant indemnification only if insurance is not generally available to viable competitors of the contractor, on a marketwide basis, at a "fair and reasonable" price. Determinations of the fairness and reasonableness of the price of private insurance shall not be made on the basis that insurance costs are limiting profits that might otherwise be achieved by the contractor. A price should only be judged unfair and unreasonable if the costs of insurance are so disproportionate to other business expenses as to result in a substantial inflation of cleanup costs.

The second determination which must be made before Federal indemnification can be granted is that the contractor has made diligent efforts to obtain insurance coverage from non-Federal sources. This determination is closely related to the finding that insurance is not generally available to all those potentially capable of performing response action work, however, the diligent efforts showing imposes the burden of demonstrating such unavailability of the party seeking indemnification as well as on the President.

The third and last requirement imposed by the legislation is that, in the case of indemnification agreements covering more than one facility, the contractor must make a separate showing of diligent efforts to obtain non-Federal insurance coverage before it begins work at each individual facility.

The special requirements covering indemnification agreements at sites where the contractor is hired by potentially responsible parties include a determination by the President that the total net assets and resources of the potentially responsible parties are not adequate to provide indemnification. The legislation contemplates a rigorous and comprehensive analysis of the financial status of such parties, in order to determine that they are unable to provide all or part of the indemnification required and that Federal indemnification is the only alternative.

Finally, the legislation provides that before the Federal Government pays any claims under indemnification agreements at private party sites, the contractor must have exhausted all administrative, judicial and common law remedies for covering indemnification claims against all potentially responsible parties participating in the cleanup of the facility. Once again, the burden of proving that such remedies have been exhausted resides with the contractor.

Any indemnification agreement signed under the authority of Superfund must contain appropriate deductibles and limits on the Government's liability for claims, including both limitations on the dollar amounts to be paid and conditions affecting the obligation to pay claims such as compliance by the contractor with sound engineering practices.

Although the President has authority to enter into indemnification agreements for cleanup at federally owned or operated facilities, claims paid under such agreements can never be made out of the Hazardous Substance Superfund but must instead be paid out of authorized appropriations from those agencies' budgets.

The primary purpose of Superfund is the cleanup of the thousands of hazardous sites that are endangering the health of millions of Americans across the country. The fund should only be used to provide indemnification as an alternative to private insurance when no other option is available to achieve cleanup.

In conclusion, Mr. Speaker, let me just say that this is a critical piece of legislation, and we must not only pass this bill promptly, but also make sure thru our oversight function that the letter and the spirit of the law is enforced by the administration.

Mr. ROE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SCHEUER].

(Mr. SCHEUER asked and was given permission to revise and extend his remarks.)

Mr. SCHEUER. I thank the gentleman for yielding me this time.

Mr. Speaker, it is frequently said that there is no army on Earth as powerful as an idea whose time has come. I think the American people feel that the time has come to get on with it and to clean up these disgusting, revolting, and shameful toxic wastes that are inflicted upon our landscape and upon our citizens from coast to coast.

In poll after poll when citizens are asked, regardless of party, regardless of whether they are liberal or conservative, "Do you want your toxic wastes cleaned up? Do you want the Government to protect your health and safety?", the answer is a resounding, overwhelming "yes." The people want this bill.

They want the overriding purpose of this bill which is to protect the lives, the health, and the safety and the well-being of the American public from these nauseating toxic wastes that litter our country by the thousands.

We have heard the expression for the last generation "Better living through chemistry." Yes, it is true. All Americans have benefited from the genius of the chemical industry and the marvelous products they have produced. But the very same technology that produced these wonderful products has left a legacy of deadly and poisonous byproducts.

Our Nation has inherited a legacy of toxic chemicals that affect the brain, the kidneys, the liver, and other vital organs. None of us is immune to the hazards of toxic wastes, but they are most serious for the elderly, the pregnant, infants, and most poignantly, the unborn.

Mr. Speaker, our Nation needs this Superfund bill.

Without an adequate cleanup program and the provision in this bill that provide for research and development of new technologies to destroy or detoxify toxic wastes, I fear that more families will be forced out of their homes, more families will lose hope and face despair, and more families will suffer sickness and death from toxic waste.

I will not suggest that this legislation is perfect, or that it is a cure-all for our toxic waste problems.

But the legislation is a quantum jump forward in our efforts to solve one of our Nation's most pressing environmental problems.

It specifies deadlines, targets and cleanup levels.

It limits the discretion of the EPA and OMB to procrastinate, delay or thwart the will of Congress and the American people.

It contains a new program to research, develop, and demonstrate new toxic waste cleanup technologies.

It establishes appropriate levels of liability for damages caused by leaking underground storage tanks.

And it incorporates the provisions of H.R. 2817, legislation I authored with the gentlewoman from Rhode Island, Miss SCHNEIDER, that authorizes a comprehensive indoor air quality research program that includes the study of radon and other indoor air pollutants.

The provision authorizes an indoor air quality research program at EPA and provides for a coordinated interagency research effort aimed at uncovering the sources, extent, and health risks associated with radon gas and other airborne toxic substances found indoors.

Mr. Speaker, we must get Superfund back on track.

This bill will do just that and I urge my colleagues to support this vital piece of legislation.

Mr. ROE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. ROE asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Speaker, I want to most wholeheartedly recommend to the Members of our distinguished body that we would support this legislation overwhelmingly in every respect. I certainly want to extend my highest regards to the Members of Congress and the leadership in the four or five different committees that worked on this legislation for all of the outstanding work they have done.

It was a tough job; everybody did not agree. We had many differences of opinion, but when all is said and done, the House is working its will and I think they have done an extraordinary job.

The second point I would like to

mention to those that are here and those that are listening or watching on their TV is that the staff, particularly, of the Congress and the respective committees and subcommittees involved did absolutely an extraordinary job in an extremely difficult situation and I believe that the House and the people of this country owes them a great debt of gratitude for the work and the energy they have brought forth to this success today.

Mr. Speaker, today we are fulfilling our commitment to the millions of Americans compelled to live near the hazardous waste sites which are the legacy of decades of environmental neglect. By securing the future of the Superfund program through 1991, we can assure and reassure our citizens that the nightmare of contaminated drinking water, contaminated soil and contaminated air will hopefully come to an end soon.

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Mr. Speaker, I do want to make just a few other comments. I have listened to both sides of the argument that is now coming out, can we afford to do this? Are we doing something in the budget? Is this a blockbuster?

It kind of riles my blood because I think that all of us agree that nobody, no industry, nobody, has the right to poison the natural resources of this country that belong to all the people. Nobody fundamentally has that right, and no system of government should allow that type of a situation to exist.

Therefore, what we are really talking about is the priorities of the country. Do we provide the millions and billions of foreign aid all over this world, or do we come back and say, in these instances, America's people and the needs of our people come first?

I think that this particular bill, in all of my experience and service in the Congress, is probably the most important bill that we could pass in the interest of the environment of this country and the very health and safety of the people of the Nation.

As the gentleman from Michigan [Mr. DINGELL], as the chairman of his committee, and the gentleman from New Jersey [Mr. HOWARD], as chairman of the Committee on Public Works, have pointed out, one thing we cannot afford to do is to destroy the water resources of this country.

There is no expenditure we could make in any area, short of the defense of the Nation itself, that would be more productive and more important to the people of this country than the passage of this Superfund bill to clean up the toxics that affect the very health and even the mutations of the future generations that are before us and will come.

Also, I hope to say to the President of the United States that it is not a question of what we cannot do, Mr. President, or what we will not do. The important point to the people of the country is to protect the health and the right and the environment and the estate of the people of the United States.

I do trust that the President will sign this bill in the interest of the American people.

The legislation we have before us will commit $9 billion to a massive new cleanup effort, instituting fundamental reforms of the program such as the establishment of uniform national cleanup standards. The legislation provides, for the first time, cleanup authority for leaking underground gasoline storage tanks and a community right to know disclosure program.

We have labored long and hard to reach this day and I commend all who fought so hard to make this bill a strong and effective effort to revitalize Superfund.

There are a few aspects of the legislation that deserve specific comment.

CLEANUP STANDARDS

The legislation establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. Where remedial actions can be broken into discrete units and treatment is feasible for some but not all units, permanent solutions must be chosen for those units where treatment is feasible.

"Permanent solution" means the application of permanent treatment or alternative technologies to hazardous substances, pollutants, and contaminants in a manner so that, when the remedial action has been completed, the release or threatened release, taken as a whole, no longer poses a hazard to human health or the environment on a permanent basis.

The legislation requires that onsite remedial actions selected or required under section 104 or 106 must comply with specific standards, requirements, criteria or limitations established under other Federal or State laws, including those listed in the statute.

The list of Federal and State laws established by the legislation is intended to be a minimum and not an all inclusive list of sources for standards, requirements, criteria or limitations that must be applied to Superfund remedial actions. If the President or the courts determine that other, unlisted laws contain standards which are legally applicable, relevant, or appropriate, such standards shall apply to such remedial actions. Where two applicable, relevant or appropriate Federal or State standards, requirements, criteria, or limitations pertain to the same situation, or to the same hazardous substance, pollutant, or contaminant, the most stringent one shall be used in selecting a remedial action.

The legislation states that standards, requirements, criteria, or limitations that are not legally applicable shall nevertheless be applied to Superfund cleanups if they are "relevant and appropriate."

The test of relevance and appropriateness involves a determination of which environmental media serve as pathways for actual or potential human or environmental exposure to a hazardous substance, pollutant, or contaminant. Once such pathways are determined, the purposes for which the standard, requirement, criteria, or limitation at issue was developed should be considered. Such standards should be applied whenever the purposes for which they were developed involve reduction of the contamination of such pathways to safe levels. For example, Safe Drinking Water Act standards used to protect public drinking water supplies would not be appropriate for application to a briney aquifer, which would never be fit for human consumption even if it was cleaned up. At the same time, aquifers which may have a reasonably foreseeable use as a source of drinking water should be cleaned up to such standards whether or not they are currently used for drinking water supplies.

The legislation specifies the factors that are to be considered in determining whether water quality criteria developed under the Clean Water Act are relevant and appropriate. These factors are the designated or potential use of surface or ground water, the environmental media affected, the purposes for which such criteria were developed and the latest information available.

Water quality criteria are essential to a comprehensive system of Superfund cleanup standards because such criteria establish maximum exposure levels for some 140 chemicals found most frequently at Superfund sites, while all the analogous standards established under other major Federal environmental laws cover only some 20-30 such chemicals.

Water quality criteria typically contain three different exposure levels—or numbers—depending on whether the water at issue will be first, consumed by people; second, consumed by people and used to support aquatic life; and third, used only to support aquatic life. In determining how to apply such criteria, EPA should select the specific exposure level which best fits the circumstances presented by the Superfund site. For example, ground water typically does not support aquatic life. If ground water used or potentially usable as a source of drinking water is contaminated by a water quality criteria chemical, the contamination should be reduced to the exposure level set for water used for human consumption only.

The legislation specifically permits the Environmental Protection Agency [EPA] to consider the purposes for which water quality criteria were developed in determining whether they are relevant and appropriate. This provision affects the selection of the appropriate exposure level and does not mean that water quality criteria which were originally developed for surface water should not be applied in situations where ground water is contaminated by a water quality criteria chemical. Rather, the determining factor is whether the criteria were developed to protect people from drinking contaminated water. If the criteria apply to such situations, they should apply whether the drinking water source is surface or ground water.

PREENFORCEMENT REVIEW

One of the most important issues addressed by the legislation is the timing of citizens' suits challenging illegal EPA decisions. Such suits would involve allegations that the agency has violated the cleanup standards and other requirements of the law and that a citizen's health and environment would be threatened if the agency was allowed to continue with its illegal acts.

The legislation allows citizens to bring a lawsuit under section 310 as soon as the agency announces its decision regarding how a cleanup will be structured. A final cleanup decision, or plan, constitutes the taking of action at a site, and the legislative language makes it clear that citizens' suits under section 310 will lie alleging violations of law and irreparable injury to health as soon as—and these words are a direct quote—"action is taken."

It is crucially important to maintain citizens' rights to challenge agency actions, or final cleanup plans, before such plans are implemented because otherwise the agency could proceed in blatant violation of the law and waste millions of dollars of Superfund money before a court had considered the illegality.

For example, the agency, succumbing to pressure from the companies who are liable for the site, may decide to ignore readily available permanent treatment technologies like incineration, in direct violation of the law's requirements. Instead, it may decide to simply cap the site to keep the rainwater off and landscape the top of the cap. Under the amendments, citizens would be able to go to court to prevent the implementation of such an illegal remedy and not wait until the cap is built, and millions of dollars have been wasted.

The legislation intends that the courts will draw appropriate distinctions between dilatory lawsuits by potentially responsible parties involving only monetary damages and legitimate citizens' suits representing irreparable injury that can only be addressed during the course of implementing a cleanup.

When the essence of a lawsuit involves contesting the liability of the plaintiff for cleanup costs, the courts should apply the other provisions of section 113(h), which require such plaintiff to wait until the Government has filed a suit under sections 106 or 107 to seek review of the liability issue. The courts should not be misled by any effort to present such cases as legitimate "citizens' suits" challenging illegal action by the agency.

BASIC MANAGEMENT OF THE SUPERFUND PROGRAM

Under the current Superfund program, cleanups are divided into two separate categories: short-term, emergency "removal" actions, and long-term, more permanent "remedial" actions. The basic distinctions between the two categories are time and money. "Removal" actions under current law generally last less than 6 months or cost less than $1 million, unless the President finds that more is needed to mitigate an emergency. "Remedial" actions, on the other hand, are taken at national priorities list sites and can involve years of work and millions of dollars in cleanup costs.

The legislation changes the current law's limits on "removal" actions to 12—from 6—months and $2—from $1—million so that EPA would have more flexibility in conducting short-term, emergency responses that often end up being more expensive than they appeared at the outset. The legislation makes this change, and also adds a new criterion for exceeding these limits—that is whether "continued response action is otherwise appropriate and consistent with the remedial action to be taken."

There are two important ramificatons of labeling a cleanup as a "removal" and not a "remedial" action. The standards and procedures of section 117—regarding public participation—and section 121—regarding cleanup standards—apply only to "remedial" actions. The rationale for this selective application is that short-term, relatively low cost emergency activities do not need to be encumbered by the precise and demanding requirements of these important provisions.

In granting EPA the flexibility to apply increased limits in structuring emergency removals, and granting exceptions even to those limits in unusual cases, the Congress does not intend to encourage the agency to shift the focus of the program to such activities. Emergency removals should remain stopgap, interim and relatively short-term, and inexpensive actions which occupy a small portion of Superfund resources. The more flexible authority should not be abused by the agency to circumvent the more rigorous requirements regarding public participation and health standards.

SITE EVALUATION PROCESS

The legislation makes several changes in the process for evaluating Superfund facilities once they are identified. These changes, contained in section 105 of the legislation, require

EPA to reassess the Hazard Ranking System [HRS] in order to address several problems brought to the Congress' attention during the reauthorization process. These problems include:

The current HRS, known commonly as the "mitre model" does not include a factor evaluating potential or actual contamination of the human food chain by releases of hazardous substances. Such contamination can pose a greater threat to human health than virtually any other type of contamination, other than contamination of household water supplies.

The current mitre model also contains an anomaly in its treatment of air emissions from Superfund sites. If and when actual measurements of such emissions exists, the model scores them as a threat to human health. But if no measurements happen to have been made of such emissions, the model ignores them in its ranking of the actual or potential hazards posed by the site. We expect EPA to revise the model to address this problem.

Mr. ECKART of Ohio. Mr. Speaker, under the time reserved by me, for purposes of a colloquy, I yield 1 minute to my friend, the gentleman from California [Mr. FAZIO].

The SPEAKER pro tempore. Without objection, the gentleman from California [Mr. FAZIO] is recognized for 1 minute

There was no objection.

(Mr. FAZIO asked and was given permission to revise and extend his remarks.)

Mr. FAZIO. Mr. Speaker, in most areas of the Superfund Amendments and Reauthorization Act of 1986 dealing with Federal facility cleanup, the conference agreement makes it clear that the responsible Federal agency or department should pay for all costs associated with implementing Superfund and that no money from the general "fund" should finance remedial activities at Federal facilities.

Is it the intention of the conferees that this same principle apply to the implementation of section 117 of the act which provides technical assistance grants to any group of individuals which may be affected by a release or threatened release at any facility—including Federal facility—which is listed on the National Priorities List?

Mr. ECKART of Ohio. Mr. Speaker, if the gentleman will yield, the answer to the question of the gentleman from California is yes. It is the intention of the conferees that the Environmental Protection Agency determine the eligibility of any group of individuals applying for a grant for technical assistance under the provisions of section 117 of the Act, and that the responsible agency shall, in a timely fashion and under terms mutually agreed upon, reimburse the Environmental Protection Agency for the Federal share of any such grants associated with facilities within its jurisdiction.

Mr. FAZIO. Mr. Speaker, I thank the gentleman for his clarification.

As one of the primary authors of section 120 and section 211 of the legislation, creating ground-breaking new requirements for hazardous waste sites at Federal facilities and the Department of Defense [DOD] in particular, I wanted to make a few comments clarifying the intent of these provisions.

Since the original Superfund law was passed in 1980, we have become increasingly aware that a double standard exists in the treatment of privately owned or operated chemical dump sites and equally hazardous facilities owned or operated by the Federal Government. The Federal agencies and departments responsible for such facilities have lagged far behind the Environmental Protection Agency [EPA] and the private sector in their efforts to identify and assess dump sites in need of cleanup on roughly 549 military bases and 340 other Federal installations across the country.

The head of the DOD Environmental Restoration Program—the main cleanup effort applicable to Federal facilities—estimated in 1985 that it could cost between $5 and $10 billion to address military sites of comparable hazard to the private sites subject to the Superfund Program. Even those daunting figures may significantly underestimate ultimate cleanup costs. For example, the $5-$10 billion figure does not include the costs of cleaning up perhaps the most notorious Federal facility in the country—the Rocky Mountain Arsenal in Denver, CO—where cleanup costs have been estimated at over $1 billion. The magnitude of cleanup costs at other well-known Federal facilities are also expected to rise into the hundred million dollar range. The cost of the cleanup at McClellan Air Force Base, for example, located in my own congressional district in Sacramento, CA, is expected to exceed $100 million. To put that in perspective with McClellan's private sector counterparts, that's more than twice the estimated cleanup costs at Stringfellow Acid Pits—also located in California—which ranks 32d on EPA's list of the worst private sites in the Nation.

As for the total universe of Federal facilities which will need cleanup over the next several years, DOD estimated in September 1985 that there were 2,949 potentially hazardous sites at 549 military bases across the country. Others predict the number of DOD sites may climb to more than 4,000 as the Pentagon cleanup effort progresses. Moreover, these figures do not include sites operated by other Federal agencies and the Department of Energy [DOE], where radioactive and chemical wastes that were byproducts of the Nation's atomic weapons research and manufacturing programs are buried. The General Accounting Office [GAO] estimated in September 1984 that there were an additional 1,075 potentially hazardous waste sites at 340 federal civilian agency installations nationwide. And, the GAO reported just last week that DOE's nine nuclear defense plants have contaminated the ground water with high levels of radioactive and chemical poisons. At the Y-12—Oakridge—plant in Tennessee, solvents and nitrates in ground water have each been detected at levels over 1,000 times the proposed drinking water standards. Mercury has been detected in an off-site creek bed at levels more than 2,000 times the background levels and 150 times greater than State safety and health standards. Moreover, the GAO concluded that it would cost more than $1 billion to bring just these nine DOE facilities into full compliance with existing environmental laws and regulations.

Efforts by most Federal agencies and departments to even identify and assess, much less clean up such facilities, have been sporadic at best over the past several years. DOD has made progress, but even the Pentagon, which has spent hundreds of millions of dollars on preliminary assessment and cleanup activities, suffers from a cleanup program that is often slow and inconsistent in implementation.

Although the 1980 Superfund law subjected federal facilities to the same legal requirements which apply to private sites, the absence of aggressive enforcement by EPA and the Department of Justice [DOJ], partnered with lack of uniform national standards for cleanup, have led a Federal Cleanup Program that responds slowly and cautiously to community pressure around the best-known facilities but does not make a comprehensive effort to cope with lower profile facilities.

We must be particularly concerned about EPA and DOJ's reluctance to file formal enforcement actions, regarding Federal facilities under the liability provisions of Superfund, the Resource, Conservation and Recovery Act [RCRA] and other applicable Federal laws. It is clear on the face of these laws that such enforcement provisions apply to Federal facilities where violations have occurred and that there is no constitutional or other legal impediment to prosecution of such cases. While formal enforcement action against Federal owners, operators, generators or transporters should be the last resort of an effective cleanup program, such actions should be pursued in cases which cannot be resolved by negotiation among the Federal agencies involved.

We are aware that DOJ has taken the position that constitutional questions would arise if one executive branch agency sought to enforce Superfund requirements against another. According to DOJ, such cases would not be "justiciable" under article III because both agencies are subordinate to the President. We reject DOJ's interpretation of this legal question. Ample legal precedent supports the conclusion that a case brought by one executive branch agency challenging violations of applicable law by another agency or department do present a "justiciable" controversy that can be resolved by the Federal courts. See, e.g. *U.S.* v *Nixon, Icc* v *Jersey City*, 322 U.S. 503 (1944).

The provicions included in section 120 of the Superfund Amendments and Reauthorization Act of 1986 are designed to institute fundamental reforms of the Federal facilities cleanup effort in three key areas.

First, the amendments make it clear that EPA has final authority over other Federal agency or department compliance with the law. By putting the agency responsibility for implementing Federal environmental programs in the driver's seat, we will ensure that the cleanup effort at Federal facilities is both adequate and consistent with parallel efforts at privately owned or operated sites.

Second, the amendments require a comprehensive nationwide effort to identify and assess all Federal facilities that warrant attention. Building off the inventory required under the Hazardous and Solid Waste Act Amendments of 1984, the legislation requires EPA to assess such sites in the same manner that it assesses privately owned or operated facilities. The legislation further requires that any Federal facility meeting the criteria applied to private sites listed on the Superfund National Priority List [NPL] shall also be placed on the NPL. Although Superfund money cannot be spent to clean up such facilities, their placement on the NPL along side comparable private facilities will ensure that compliance with the law's standards is achieved by the Federal Government in an effective and timely manner.

Third, the amendments eliminate the current double standard between private and Federal sites by setting forth timetables both for the formulation of cleanup plans and for the initiation of cleanup at all Federal facilities qualifying for listing. The amendments reiterate the rule of current law that all cleanup standards and other legal requirements—except as specified—shall apply to Federal facilities in the same manner as they apply to private sites. These timetables, standards and requirements are enforceable under the citizens' suits provisions of the legislation as nondiscretionary duties of the Federal Government.

State law also continues to be applicable to Federal facilities. For Federal facilities that are listed on the National Priorities List, the amendments establish special rules and procedures for the application of State environmental and health laws. For all Federal facilities required to be cleaned up under either Superfund or RCRA, the legislation does not affect the current application of State law and does not preempt State law in any way. The only exception is a narrow provision stating that a State cannot create special rules for Federal facilities that are not otherwise applicable to similar situations at private sites and then expect these rules to be enforceable under Superfund.

The Hazardous Waste Compliance Docket created by the legislation is intended to be a full and comprehensive inventory of all potentially hazardous facilities in the country, including releases required to be reported under section 103 of the Comprehensive Environmental Response, Compensation and Liability Act [CERCLA]. Releases covered by CERCLA include, in addition to the traditional waste disposal or storage site, releases of hazardous substances that may occur on a more sporadic or idiosyncratic basis. All such releases must be included on the docket.

The administrator of EPA is responsible for ensuring that the Federal agencies and departments conduct their preliminary assessments on schedule and in an appropriate fashion, and for evaluating all facilities included on the Hazardous Waste Compliance Docket. The cost of such assessments and evaluations shall be paid by the Federal agency or department responsible for the facility, along with all costs of preparing remedial investigations and feasibility costs of preparing remedial investigations and feasibility studies, conducting other necessary studies and ultimately cleaning up the facility. In carrying out such requirements, EPA must be scrupulous in assuring that Federal facilities are treated exactly like private facilities and are not given any special treatment.

Following the listing of a Federal facility on the National Priority List, the legislation requires that the relevant Federal agency or department shall enter into an interagency agreement with the EPA administrator for the completion of remedial action at such facility. We intend that such agreements shall reflect the mutual agreement of the responsible Federal agency or department and EPA regarding what remedial action is appropriate for the facility. However, interagency negotiations have too often become stalemated when the responsible agency refused to comply with EPA's suggestions regarding what remedy was needed to protect human health and the environment. Because of these problems, the legislation explicitly gives EPA final authority to select a remedy over the objections of the responsible agency when necessary. This authority does not diminish the legal obligations of the responsible agency for ensuring the cleanup is carried out in a timely and effective manner and, should citizens' enforcement action at the facility be taken, the responsible agency should be a primary defendant from whom relief must be sought.

Further, the legislation does not affect in any manner the application of RCRA to facilities owned or operated by the Federal Government, including but not limited to the corrective action authority provided to EPA under section 3004(u) of that act. Congress expects that when EPA implements section 3004(u) with respect to Federal facilities, the same definition of what constitutes such a facility will apply as applies to facilities owned or operated by private parties. Once again, it may be appropriate for EPA to file formal enforcement actions under RCRA against Federal agencies or departments when compliance with the law's requirements cannot be achieved in any other way.

Secton 120 also recognizes the reality that, in unusual cases, the national security may require issuance of circumscribed executive orders exempting a Federal facility from the requirements of the Superfund Amendments and Reauthorization Act of 1986. In all such cases, executive orders shall adopt the least burdensome method of protecting legitimate national security interests while still complying with the important environmental and health requirements imposed by the legislation. For example, it may be appropriate to require that all EPA employees reviewing cleanup plans obtain a national security clearance, but it would not be appropriate to exempt such plans from national cleanup standards simply because EPA employees are assigned to ascertain what standards should apply to the cleanup.

Section 211, the Department of Defense Environmental Restoration Program, is a direct response to a growing realization that over the years DOD has improperly disposed of literally billions of gallons of poisonous chemicals in nearly ever State in the Nation. From one end of the country to the other, the Defense Department has polluted surface and ground water, contaminated drinking water and fouled open waterways.

Section 211, in conjunction with section 117, 120 and 121 of the act, reflects the understanding that DOD can no longer cleanup their sites to a different standard, under less scrutiny, without direct participation from the public, and without any oversight from EPA, and State and local health and environmental officials. Indeed, section 211 not only seeks to correct this past deficiency, but seeks to make cleanup actions at Department of Defense sites a model for other Federal and private remedial actions.

This section addresses a number of problems revealed in congressional hearings and through the work of the GAO.

First, section 211 establishes the Environmental Restoration Program for the DOD to provide centralized control of environmental activities in consultation with the Administrator of EPA. The bill makes it clear that while the Secretary of Defense has the basic responsibility for carrying out response actions subject to the requirements of, and in compliance with, CERCLA, the Secretary must consult with and is subject to the oversight of the Administrator of the Environmental Protection Agency. Further, the bill makes it clear that, as with other Federal agencies and departments, EPA shall have the authority to select a remedy over the objections of the Secretary of Defense when necessary. Again, this obligation does not diminish the legal obligations of the Department of Defense for ensuring the cleanup out in a timely and effective fashion.

Second, the legislation requires greater DOD coordination with Federal, State, and local health and environmental authorities and the public. GAO has found that the military's coordination with the affected officials has been insufficient to ensure the efficient and thorough cleanup of military toxic waste sites. The legislation mandates that the military coordinate all aspects of the Cleanup Program—from the identification and assessment of any possible contamination to the details of proposed and final cleanup plans—with Federal, State, and local authorities and the representatives of the affected community. In addition, the legislation requires DOD to establish Technical Review Committees made up of representatives of the military, EPA, local citizens and State and local health and environmental regulatory authorities to review DOD cleanup plans and consider all data and information pertaining to releases or potential releases of hazardous wastes or substances from DOD facilities. It is intended that these Technical Review Committees taken an active role in the assessment and cleanup decisionmaking process. We further intended that DOD establish Technical Review Committees at all facilities participating in the Installation Restoration Program and that such committees include as many members of the community as necessary to adequately represent the often diverse interests of those affected by releases or potential releases from the installation.

Third, section 211 sets up the Environmental Restoration Transfer Account in order to facilitate the funding of response actions. Congressional hearings and investigations by GAO identified the cumbersome DOD funding process as a major obstacle to an accelerated cleanup effort. The transfer account aggregates all environmental restoration funding in a single budget account and provides for the allocation of funds from the transfer account to the relevant appropriation accounts—including military construction, again, to facilitate the timely funding of response actions. The transfer account also preserves the existing account structure within the Department of Defense while at the same time providing the program with a greater degree of insulation from competing defense programs. It will ensure the program higher visibility and at the same time make it less vulnerable to unnecessary to capricious budget reductions. We further intended that all moneys appropriated to the Environmental Restoration Transfer Account be used only for authorized environmental restoration activities.

Fourth, the legislation requires DOD to establish a research, development, and demonstration program to develop innovative and cost-effective cleanup technologies. Devoting appropriate resources to research, development, and demonstration is the only way to significantly reduce the ultimate price tag of the DOD Cleanup Program—again, currently projected at between $5 and $10 billion—as well as promote the use of newly developing permanent cleanup technologies. DOD has entered into a cooperative agreement with EPA to jointly fund some research into new, more cost-effective cleanup technologies, and, we think the Department should intensify its efforts in this regard. The bill authorizes no specific funding level for this program, but it is intended that DOD develop and propose to the Congress a plan, including annual funding targets, for implementing a comprehensive and expedited 5-year plan for research, development and demonstration of innovative, permanent cleanup technologies. It is our strong belief that considerable environmental and economic benefits will result from such a program. While I am not committed to a particular funding level, I think it is clear that an investment in research, development, and demonstration of these innovative, permanent cleanup—and waste reduction—technologies of approximately $25 million a year would not be out of order.

Again, I encourage the Department of Defense to propose a comprehensive and aggressive RD&D plan as soon as possible.

And, fifth, section 211 requires the Agency for Toxic Substances and Disease Registry and EPA to generate fundamental health risk assessment data on the most commonly used

DOD hazardous substances.

Finally, several sections of the Superfund Amendments and Reauthorization Act of 1986 put greater emphasis on addressing the legitimate concerns of the public and promoting effective public participation in site identification, site assessment, initial responses, cleanups, and long-term monitoring. The legislation makes it clear that information should not only be provided to the public but that the public should be involved in the decisionmaking process at all cleanup sites including those owned or operated by Federal agencies and departments. As both GAO and the Office of Technology Assessment have declared, an expanded public role in the Superfund Program promises to reduce delays by dealing with community concerns before substantial actions are taken and by providing useful oversight of activities.

In order to maximize the effectiveness of public participation, section 117 of the legislation provides grants to any group of individuals which may be affected by a release or threatened release at any facility—including Federal facility—which is listed on the National Priorities List under the National Contingency Plan. Public participation, if given this critical federal support for obtaining technical assistance, can lead to more effective cleanups for all communities, not just for those which happen to be better organized or fortunate enough to have citizens with political or technical expertise.

In all other areas dealing with Federal facility cleanups, the legislation is clear that the responsible agency should pay for all costs associated with implementing Superfund and that no moneys from the general fund should finance cleanup-related activities at Federal facilities. Therefore, we believe the administrator of the Environmental Protection Agency should, as soon as possible—within 6 months of enactment of this legislation, take such steps as are necessary to negotiate a memorandum of understanding, or an augmentation to an existing memorandum of understanding, with any Federal agency which has a facility within its administrative jurisdiction listed on the National Priorities List. Such agreements shall specify that the Environmental Protection Agency is responsible for determining the eligibility of any group of individuals applying for a grant for technical assistance under the provisions of section 117 of the Superfund Amendments and Reauthorization Act of 1986. We further intend that the responsible agency shall reimburse the Environmental Protection Agency, through such means as are mutually agreeable and in an expeditious fashion, for the Federal share of any such grants associated with facilities within its jurisdiction.

In conclusion, Mr. Speaker, I would like to thank Mr. Florio, Mr. Dingell, Mr. Howard, Mr. Roe, Mr. Eckart of Ohio, Mr. Moody, and Mr. McCurdy for their leadership on this issue and for their commitment to developing provisions of this bill that will substantially strengthen Federal facility compliance with the Superfund Act.

Mr. ECKART of Ohio. Mr. Speaker, I reserve the balance of my time for the purposes of colloquial debate.

Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. Coats], a member of the Committee on Energy and Commerce.

(Mr. COATS asked and was given permission to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, will the gentleman yield?

Mr. COATS. I yield to the gentleman from Michigan.

(Mr. HENRY asked and was given permission to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, I rise in strong support of the conference report.

Mr Speaker, I want to draw attention to two particular aspects of the conference report on H.R. 2005, the Superfund Amendments and Reauthorization Act of 1986.

First, I am pleased that an idea which I first helped develop in the Science and Technology Committee way back at the beginning of this long process has been included in the conference report. One of the major problems with the Superfund program has been that, in cleaning up NPL sites, we have sometimes simply moved the problem to another landfill, and created two hazardous sites rather than one. Obviously a number of the provisions of this reauthorization bill are intended to deal with that problem and prevent it from recurring. Ironically, during these same years in which truly "getting rid of" hazardous waste has proven to be so difficult, the newspapers and magazines have frequently reported on new treatments and technologies advertised or promoted, with varying degrees of hype, as effective in neutralizing or destroying certain types of hazardous material. The problem has been in standardizing the testing and demonstration of these technologies, and disseminating the information on those which are shown to be effective.

Initially I proposed that a nonprofit, nongovernmental testing and evaluation center be established to evaluate and demonstrate these new technologies. Such a center would have no proprietary interest in the technologies being developed or be perceived as representing one interest or another in the inevitable conflicts which arise. The conference report, as did the House bill, instead directs the Administrator of EPA to establish an Office of Technology Development. The purpose of the Office of Technology Development, however, is the same—to select at least 10 sites which will be available to approved applicants for testing and evaluation of innovative technologies for treating hazardous waste. The office will also maintain a central reference library, available to the public, of information regarding alternative and innovative technologies. I believe this provision of the bill has great potential for both encouraging the development of alternative treatments for hazardous wastes and giving those treatments credibility and marketability which will allow us to move away from simply burying hazardous wastes, and where problems have developed, reburying it.

Second, the conference report carries forward the provision in both the House and Senate bills requiring that the Agency for Toxic Substances and Disease Registry perform a health assessment of each NPL site, as well as of other sites requested by affected private parties. Such health assessments are an important improvement in this bill, and will do much to address the fear and uncertainty which persons who live or work in the vicinity of a hazardous waste site understandably feel. The purpose of these health assessments is not to be the final word in terms of individual health effects or injury caused by hazardous waste site exposure—as our colleagues in the other body have noted, they are not intended to provide information likely to establish legal causation in an individual toxic tort case, nor are they intended to have a greater weight than would otherwise be accorded such a general assessment of potential health risks under the rules of evidence. But they will provide a preliminary body of information which to determine what further information or action by ATSDR or EPA may be appropriate or necessary. I encourage the agencies involved also to address them in this way so that they may be both timely and useful in the way in which the legislation envisions.

Mr. COATS. Mr. Speaker, I rise in support of the Superfund conference report. I enthusiastically support the extension and expansion of the Superfund Program to clean up our toxic wastes. I am less than enthusiastic about the way in which we finance this cleanup.

We do have a serious toxic waste disposal problem and we all recognize that there has not been enough action taken to date to address the cleanup of hazardous wastes. Now we have a consensus package before us that includes a fivefold increase in funding and greatly improves the administration of the Superfund Program. If we fail to act now, we will face the dilemma that has confronted us over the past year: no progress on one of the most important environmental problems facing the Nation. So I urge my colleagues to support this package despite the reservations that I know many of you have.

Let me briefly highlight some of the positive aspects of the conference report. H.R. 2005 greatly accelerates the pace of the program by requiring EPA to ensure that long-term cleanup work by the Government or by private parties begins at no fewer than 375 Superfund sites over the next 5 years. This measure calls for cleanup standards that generally would meet requirements of Federal and State environmental laws, but EPA could waive a requirement in specified circumstances. This proposal protects the public from the hazards of leaking underground storage tanks, establishes a procedure for negotiated settlements, sets up an emergency response and community-right-to-know program, and allows citizens the right to sue in cases where the law is not enforced or the Government has not performed its mandated duties.

This conference agreement provides far more protection against hazardous waste than any law has ever done before. In the past, we have been expending almost as much of our resources on litigation costs as we do on cleanup. While I question whether this proposal will actually change that direction, it is my hope that we can take the toxic waste cleanup effort out of the courtrooms and to the abandoned waste sites where it belongs.

While there is general agreement on the programmatic aspects of the Superfund Program, I continue to have reservations with how we fund the program. As many of you know, last year, I joined a majority in this House in opposing the manufacturer's excise tax, also known as a value-added tax. I feared that such a tax would unfairly impact American manufacturers, as well as presenting a very serious problem from a tax policy perspective. A value-added tax is a regressive tax that strikes hardest at lower- and middle-income people and has the potential to be increased over time. Instead, I supported the House position, which rejected the VAT and placed the burden of financing Superfund on those industries thought to be the major contributors to abandoned wastesites.

The financing proposal in this conference report contains some improvements from the earlier package. In lieu of the value-added tax, it includes a special alternative minimum corporate tax, which would raise $2.5 billion in revenue rather than the proposal from last year for a manufacturer's excise tax of $5.4 billion. Also, corporations with less than $2 million of such income would not be taxed. However, what disturbs me is that the alternative minimum tax would be imposed on companies regardless of their waste-management practices.

My preference would have been adoption of the substitute that was offered by Mr. LOTT in the Rules Committee. It would have allowed for adoption of the program portion to go forward, but would have provided only 1 year of funding, leaving the queston of 5-year funding to next year's Congress. With so little time remaining in the 99th Congress, I fear we may be rushing to judgment on a proposal that will establish a dangerous precedent of taxing those who contribute little or nothing ot hazardous waste.

So often, we have found ourselves in a politically divisive process that has resulted in no real progress in addressing this critical national problem. It is incumbent upon each and every Member in this legislative body to assure that we adopt a bill that will actually bring about meaningful cleanup of our Nation's hazardous wastesites. Therefore, I intend to support the conference report agreement, and hope my colleagues will join me in supplying this much needed legislation.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Colorado [Mr. SCHAEFER].

(Mr. SCHAEFER asked and was given permission to revise and extend his remarks.)

Mr. SCHAEFER. Mr. Speaker, I am happy to say that persistence has paid off. Since the Superfund reauthorization process began nearly 3 years ago, there have been times when we all wondered if a 5-year authorization would ever come about. Without the diligent efforts of so many—particularly chairman DINGELL and ranking minority member Mr. LENT, DENNIS EKART of Ohio and former Congressman BROYHILL and now Senator—it might never have.

Cleanup of hazardous waste is not only desirable, it is essential. Hundreds of waste sites across the country have been identified by the EPA as ones deserving our foremost attention, and thousands more could potentially join this list. Citizens in my district are especially concerned about two sites—Lowry landfill and the Rocky Mountain Arsenal. Without adequate funding, the cleanup program at these locations could soon be delayed and possibly terminated. Approval of this legislation can wait no longer.

The conference agreement we are considering sets stringent national standards and an aggressive schedule for cleanup of Superfund locations. In addition, it requires a reevaluation of the hazard ranking system ensuring that it accurately assesses the risks of potential sites. The funding of this program is as fair as can be expected, since both the broad-based and polluter pays advocates are given full consideration.

The compromise before us today is a tribute to the congressional process. Although no legislation of this magnitude is perfect, the many long hours of consideraton have clearly resulted in improvements over the original measures approved by both bodies. I urge my colleagues to join me in support of the Superfund Conference Report thereby providing this much-needed program with adequate funding for years to come.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Utah [Mr. NIELSON], a member of the Committee on Energy and Commerce.

Mr. NIELSON of Utah. Mr. Speaker, I rise in reluctant support of this bill. I opposed the bill when it left the House because I did not like some of the amendments that were placed on the bill in the House, even though I supported the bill in committee.

I am happy to be back on the side of supporting a very important environmental bill. I especially would like to thank the chairman of the full committee, the gentleman from Michigan [Mr. DINGELL], and the gentleman from Ohio [Mr. ECKART], for giving such consideration to a problem I had in my district.

I would also like to thank the gentleman from New York [Mr. LENT] and other members of the committee. I think we have made very good progress and I congratulate the conferees.

Mr. DINGELL. Mr. Speaker, I yield

1¼ minutes to the gentleman from Texas [Mr. Ralph M. Hall].

(Mr. RALPH M. HALL asked and was given permission to revise and extend his remarks.)

Mr. RALPH M. HALL. Mr. Speaker, I rise in reluctant support of the conference report, though I do not rise in reluctant support of my praise of the chairman, the gentleman from Michigan [Mr. Dingell], his staff, as well as the gentleman from New York [Mr. Lent], and the minority staff, the gentleman from New Jersey [Mr. Florio], the gentleman from New Jersey [Mr. Roe], and, of course, the gentleman from Ohio [Mr. Eckart], for his very bold and imaginative leadership in steering this bill.

I think I would be forced to give some thanks to Pope Barrow, who provided a lot of institutional memory and set the standard for the stamina.

My reluctance stems not from the programmatic portion of this legislation, on which I was privileged to be a conferee and which I support, but from the tax title. The producing States, primarily Texas and Louisiana, are bearing a disproportionate burden of the financing of this program at a time when our State economies can least afford it. Consider the following:

Texas would pay about 27.5 percent of the crude tax, based on its share of refining runs; Texas would pay about 56 percent of the feedstock taxes; and Texas would pay about 16 percent of the broad-based taxes.

Three producing States, Texas, Louisiana, and Oklahoma, will pay more than three-fourths of the taxes raised under the Superfund Program.

Whereas, only about 3 percent of the National Priority List Sites are located in these three States.

Notwithstanding the fundamental inequity in the funding package, I am reluctantly supporting this conference report and urge the President to sign the bill bacause it is in the national interest that we continue the Superfund Cleanup Program. But I caution the Members of this House not to continue to look to the oil and gas producing States as limitless "deep pockets" to fund all the environmental cleanup efforts that need to be undertaken now. We have reached our limit, and from this point forward, we expect some substantial additional tax effort out of our friends in the Midwest and Northeast to finance acid rain and other environmental cleanup efforts in the future.

The producing States have already taken a tax hit in the so-called tax reform bill, we are taking an additional $6 billion hit in the legislation before us today, and we are being asked to take a further multibillion dollar tax hit on our economies in the acid rain bill now pending in the Energy and Commerce Committee. All of this at a time when our State economies are in shambles.

Mr. Speaker, the programmatic provisions contained in the conference report are the result of one of the difficult legislative efforts that I have been a part of in my years of public service. While I am less than thrilled with some of the parts of this title, such as the Community Right to Know provisions, there are parts that I believe represent a major step forward in straightening out some of the more punitive aspects of the Superfund program that were enacted in 1980.

I believe now there is a much greater likelihood that the EPA and private parties will be able to reach fair and equitable agreements that will lead to cleanups, rather than continued litigation. And the cleanup standards contained in the bill give to the Administrator a certain amount of discretion in tailoring the degree of cleanup needed to requirements of the site and the immediate environment. This I believe is a major, commonsense step forward that will enable us to make better use of the Superfund revenues. I am also pleased that the bill does not change the scope of the petroleum exclusion found in the definitions section of the act. That provision excludes from the definition of "hazardous substance" all types of petroleum, including crude oil, crude oil bottoms, refined fractions of crude oil, and tank bottoms of such which are not specifically listed or designated as a hazardous substance under other parts of the definitions section.

Thank you, Mr. Speaker, and I yield back the balance of my time.

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Mr. LENT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. Zschau].

(Mr. ZSCHAU asked and was given permission to revise and extend his remarks.)

Mr. ZSCHAU. Mr. Speaker, today, after almost 1 year of delays, Congress will finally give its approval to Superfund legislation that will lead to the clean up of our Nation's worst hazardous waste sites. It's about time.

I believe that we need a stronger and more effective Superfund. That is why I supported the House version of Superfund in 1984 and again in 1985; and that is why I rise today in support of the Superfund conference report, H.R. 2005. I believe that this carefully crafted measure will mean faster toxic waste cleanups and improve the quality of those cleanups. It achieves a workable compromise that underscores our Nation's commitment to cleaning up toxic wastes. Although I have some concerns about the financing mechanism, I strongly urge the President to sign this vital legislation when it reaches his desk.

I want to stress an important point: Under no circumstances should the Congress allow this critical environmental program to be put off until next year. The American people want and deserve action now. I am told by Environmental Protection Agency officials that if Superfund reauthorization is not enacted before Congress adjourns, it will result in terminating literally hundreds of cleanups throughout the Nation, including many sites in my home State of California. Our Nation cannot afford such a disaster.

Mr. Speaker, while it is vital for Congress to thoroughly debate and analyze the serious issues involved with Superfund, I believe that this important legislation has been debated and analyzed enough. Congress has spent nearly 3 years to develop Superfund legislation that would be acceptable to all interests. The time for action is now.

Today, we have a conference report that largely accomplishes that important goal. It is backed by environmentalists, the chemical industry, the electronics industry, the steel industry, several oil and gas companies and most importantly the vast majority of the American people.

As my colleagues know, on October 3, the other body voted 88 to 8 in favor of the Superfund conference report. That vote clearly illustrates the widespread bipartisan support for this important environmental legislation. Today, the House has an important opportunity to once again demonstrate our very deep and fundamental commitment to the Superfund program by promptly passing this conference report.

Mr. Speaker, I don't think you could find anyone in this Chamber who would say that the Superfund Program is not needed. While many Members have different views on how this program should be implemented, we all recognize that toxic waste is a critical problem that needs to be solved.

The House should approve this conference report, and I strongly urge the President to sign it so that the Nation can get on with the important business of cleaning up toxic waste.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. CONTE], the ranking minority member of the Committee on Appropriations.

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I rise in support of this conference report on the Superfund reauthorization. Although I strongly support the program reauthorization, I have some reservations about the financing mechanism arrived at by the conferees. But since I recognize that this is probably the best compromise available at this time, and that putting in place a stable financing system is critical to the continuation and success of the program.

The States of the Northeast and Midwest have over 60 percent of the sites on EPA's national list of abandoned hazardous waste dumps scheduled for cleanup. Since the taxing authority for Superfund expired last year, excavation and containment work at these dump sites has come to nearly a complete standstill. Although we on the Appropriations Committee have twice provided interim funding to keep the program alive pending reauthorization, those funds ran out in September.

So the need for this reauthorization is clear, and I urge that it be adopted. But I would like to express my strong reservations about one aspect on the financing scheme.

The original House version of the Superfund legislation would have taxed oil at 11.9 cents per barrel, to raise $3 billion over 5 years, with no distinction in the tax rates between domestic and imported petroleum products.

The conference agreement, however, taxes domestic crude oil at 8.2 cents per barrel, while the tax on imported oil and refined products would be 11.7

cents per barrel. The tax on domestic crude would raise approximately $1.2 billion over 5 years, while the tax on imported oil and refined products would raise $1.55 billion over the same period.

It is this differential, Mr. Speaker, to which I take exception.

I have been opposed to an oil import fee since I came to the Congress. In fact, my first speech on the floor of this House was in opposition to then-President Eisenhower's imposition of an oil import fee in 1959. Although the differential fee on domestic and imported petroleum products in this conference report is not, strictly speaking, an import fee, it does share some of the same characteristics of one. It does adversely affect the Northeast and Midwest, which are proportionately more dependent upon imported oil than the other regions of the country. But the differential is sufficiently small, and the impact will be sufficiently diluted, that I believe it can be regarded as acceptable in the context of ensuring the future of the Superfund Program, which is so important to our region.

I want to make it clear, however, and I believe that I speak for my colleagues in the region on this point, that our acquiesence in this matter should not be regarded as any lessening of our absolute opposition to an oil import fee. We continue to oppose such a fee on grounds of national economic policy, on grounds of regional equity, on grounds of national security, and in the interest of keeping the national inflation rate under control.

The small difference between the domestic and imported petroleum fee contained in this conference agreement should in no way be regarded as a precedent for imposing an oil import fee, and I hope that my colleagues will not be any misapprehension on this point.

On that note, Mr. Speaker, I urge the adoption of the conference report.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the gentleman from Washington [Mr. SWIFT], who has contributed so much to make this legislation possible.

(Mr. SWIFT asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. SWIFT. Mr. Speaker, the Superfund conference was a long, difficult process. The honest differences between the House bill and the bill passed by the other body were numerous and highly complex. Although negotiations on the programmatic sections went to virtually full-time for 5 months, often it appeared that agreement would be impossible.

Nevertheless, knowing that failure of the conference would mean that the country would be stuck another 5 years with the existing flawed program, we pushed on and finally reached an agreement that has broad support. Although there will always be different opinions as to what would be the ideal Superfund Program, I believe that almost everyone agrees that the conference report is far better than existing law.

The conference report requires Superfund cleanup actions to meet high standards of protecting human health and the environment. It requires those cleanup actions to be of a permanent nature to the maximum extent practicable. The preference for permanent solutions is one of the most important aspects of the conference report. We can no longer afford to just bury our hazardous wastes. We must use technologies that destroy them or render them nonhazardous. This has always been a basic premise of the House legislation, and I would not have supported a bill that did not have that thrust. Over the last 6 years, the Superfund Program has not led to permanent solutions to hazardous waste problems, and these provisions are designed to change that. In that light, it is important to establish in the legislative history of this bill that, notwithstanding remarks in the other body to the contrary, the language dealing with permanent treatments is clearly intended to constrain EPA's flexibility in selecting remedies.

This point is, I believe, clear from the statute itself. Any remedial action selected by EPA is required under section 121 to be, first and foremost, "protective of human health and the environment * * *." After identifying alternative remedial actions that achieve this fundamental goal, EPA is required to determine which alternatives are "cost-effective." The conference report clarifies that "[o]nly after the President [through EPA] determines * * * that adequate protection of human health and the environment will be achieved, is it appropriate to consider cost-effectiveness." Finally, choosing from those cost-effective remedial actions that are adequately protective of human health and the environment, EPA must select that cost-effective remedial action that provides the greatest degree of permanency.

EPA has no authority to reject a cost-effective permanent solution just because it is more expensive than another cost-effective action. Frequently, this may mean that the remedial action will require large sums of private party money or even moneys from the Fund; but if the permanent solution is a cost-effective solution, it must be applied. In other words, EPA may never select a non-permanent remedial action where there is a cost-effective pemanent solution.

The conference report improves existing law in several other respects. It sets a schedule of cleanups for EPA to follow, and for Congress and the public to measure the program by. It gives EPA flexible but strong powers to enforce the program, particularly against recalcitrant parties. And it allows citizens to be involved in the program from start to finish, and also provides for citizen suits so that they may seek the aid of the courts when necessary.

The conference report also establishes a new law, known as the "Emergency Planning and Community Right-to-Know Act of 1986." Most of my own participation in the conference was spent on this aspect of the bill, working closely with Representative LENT, Senator STAFFORD, Senator BENTSEN, and Senator LAUTENBERG in the so-called right-to-know "subgroup." On a personal note, I would like to thank all of these gentleman for their hard work, good faith efforts, and cooperation, which led to agreement on a provision that, in my view, improves on both bodies' bills.

This new law will provide for the development of local emergency response plans in communities across the Nation. It will give important information to firefighters and other emergency response personnel about hazardous chemicals present at facilities that they may be called upon to deal with in an emergency. And it will require that people be informed of hazardous chemicals that are present in their communities, including estimates of the amounts that are released—whether routinely or accidentally—into the environment.

At this point, I would like to comment on some particular features of the emergency planning and community right-to-know provisions which require elaboration. I was present at all meetings of the right-to-know "subgroup," and I believe that these observations accurately reflect the proposal that the "subgroup" made to the full conference and which the conference adopted.

EMERGENCY NOTIFICATION

Section 304 requires immediate notification of releases of extremely hazardous substances from facilities that produce, use, or store hazardous chemicals. The notifications are to be sent to the community emergency coordinators and State emergency response commissions for the emergency planning districts and States likely to be affected by the release.

Since the State commissions are not required to be in place until 6 months after the date of enactment, and the local planning committees not until 10 months after enactment, the notification requirements in section 304 are not effective until those dates. If before those dates a facility experiences a release that would require notification under section 304, the owner or operator should provide such notification to relevant State and local emergency response personnel.

PROVIDING TIER II INFORMATION TO THE PUBLIC

Section 312(e)(3) provides that any member of the public may request detailed tier II information from a State emergency response commission or a local emergency planning committee. If the commission or committee has already acquired the information, it must retain that information and provide it to the requesting member of the public. If the commission or committee has not previously acquired the information it must do so, and provide it to the requesting member of the public, if the hazardous chemical in question has at any time in the preceding calendar year been stored at the facility in a quantity equal to or exceeding 10,000 pounds. In other words, if the facility has on hand a total of 10,000 pounds or more of the hazardous chemical at any one point in time during the course of the calendar year, the commission or committee must acquire and provide the tier II information if requested.

The commission or committee may, at its discretion, acquire tier II information even if the chemical is never present in a quantity equal to or exceeding 10,000 pounds. If the commission or committee does acquire such information, it must be made available to the public. This provision is intended to assure that the public receives useful information without imposing unreasonable burdens on the commissions and committees.

REVISIONS OF REPORTING FORMS

The Administrator is required to publish forms under both sections 312 and 313. Each section contains a deadline for such publication. Since the deadlines will occur shortly after enactment of the bill, the Administrator is not required to publish the forms for public comment prior to publishing the final forms by those deadlines. However, the Administrator is encouraged, to the extent feasible, to consult with interested organizations and the affected industry in order to make the forms as useful as possible. Furthermore, the Administrator may provide an opportunity for public comment on the final forms after they are published and, after receiving comments or after experience with the forms, revise them in order to improve reporting. Any such revisions should be published sufficiently before the beginning of the applicable reporting period to allow the affected industry adequate time to prepare for their use.

SCIENTIFIC BASIS FOR LISTING TOXIC CHEMICALS

Section 313(d) authorizes the Administrator to revise the list of toxic chemicals for which annual toxic chemical release forms must be submitted. The statutory language of section 313(d) clearly requires any such revision, whether it is to add or delete a chemical, to be based on solid scientific evidence. The statute provides that "[a] determination [to revise the toxic chemical list under section 313(d)] shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator." The degree of scientific support needed for such a determination is to be judged not in comparison to the degree of scientific support needed to justify a regulation, as was suggested in the other body; that is not the issue here, and such comparisons are not particularly useful. Rather, the degree of scientific support to add or delete a substance needed is that stated in the statutory provision I just referred to. It is important that these reports be useful, and therefore the chemicals subject to the reporting requirements must be selected on the basis of solid scientific evidence.

TOXIC CHEMICAL LIST PETITIONS BY GOVERNORS

Section 313(e) allows members of the public to petition the Administrator to add or delete chemicals from the list of toxic chemicals published under section 313. Petitions from State Governors must be given special consideration under paragraph (2) of section 313(e). That paragraph requires EPA to respond to a Governor's petition to add a chemical within 180 days, either by initiating a rulemaking to add the chemical to the list or publishing an explanation why the petition does not meet the criteria for adding a chemical to the list. If EPA fails to respond within the 180-day period, the chemical must be added to the list. That is, the Administrator must promptly publish a final rule in the Federal Register which adds the chemical to the list.

TOXIC CHEMICAL REPORTING THRESHOLDS

Section 313(f) sets thresholds for reporting toxic chemical releases under section 313, and it provides the Administrator with the authority to revise those thresholds through rulemaking. Any revised threshold should be designed to improve the usefulness of the reports. It must be structured to obtain reporting on a substantial majority of the total nationwide releases of the toxic chemical at all facilities covered by section 313.

Reporting from all facilities will not necessarily be required in order to accomplish this goal. For example, if most of the releases for a specific chemical come in high volumes from only a few facilities, and the releases from other facilities, though numerous, are very small, the threshold might only result in reporting from the high-volume facilities. Similarly, if a particular type of use accounts for most of the releases of a chemical, the Administrator might require reporting only from those facilities that release the chemical in connection with that use. This flexibility is given to the Administrator in order to achieve the goal of obtaining useful reports on the majority of releases without placing undue burdens on facilities which contribute little to such releases.

TRADE SECRET FACTORS

The trade secret provisions, including those dealing with health professionals, are modeled on those of the original House bill as modified by amendments that I offered in the House Energy and Commerce Committee. Although the conferees agreed to modify those provisions in order to address certain concerns raised by the other body, it should be clear that the trade secrets approach taken by the conferees originated in the House. Therefore, the legislative history in the House is particularly illuminating in understanding these provisions.

Section 322(b) sets forth the factors to be applied by the Administrator in determining whether a specific chemical identity has been properly withheld from submission under sections 303(d), 311, 312, or 313 as a trade secret. These criteria are well established and require little explanation. One criterion is that the information claimed as a trade secret is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law. In making this determination, the Administrator must first consider whether such a State law is applicable to the facility making the claim. For example, in reviewing a claim asserted by a facility doing business only in Missouri, the Administrator would only look to the law of Missouri, and that of such other States as require the Missouri facility to disclose or make available to the public the information.

PROVIDING TRADE SECRET CHEMICAL IDENTITIES TO STATES

Section 322(g) allows State Governors to obtain trade secret chemical identities that otherwise may not be disclosed. The Governors will be able to disclose this information within their State governments; however, neither they nor any State employees obtaining the information may knowingly and willfully disclose it outside the State government without violating section 325(d)(2) and subjecting themselves to criminal liability. Of course, this does not limit their ability to disclose the same information if the State obtains it under its own authority independent of section 322(g).

INFORMATION ON ADVERSE EFFECTS

Section 322(h) requires that where the specific identity of a chemical is a trade secret, it adverse health and environmental effects must be disclosed in responding to requests for information. The purpose of this requirement is to assure that the maximum information possible be made available to the public without compromising the trade secret. It is important, however, that the information on adverse health and environmental effects be described in general terms so as not to provide a unique identifier of a particular trade secret chemical.

HEALTH PROFESSIONALS' USE OF TRADE SECRETS

Section 323 requires that under specified circumstances the owner or operator of a facility must provide certain health professionals with the specific chemical identity of hazardous substance even though such identity is a valid trade secret. This section only expands the rights of health professionals to obtain information, although it attaches certain responsibilities to health professionals who choose to exercise those rights. Health professionals who obtain trade secret information under the authority of this section must, except in specified emergency situations, sign a written confidentiality agreement before obtaining the information. State health professionals who obtain the information under section 322(g) are not required to sign confidentiality agreements.

The confidentiality agreement must allow the health professional to use the information for the purposes that the health professional sets forth in a written statement of need, which is to be submitted before disclosure of the information except in emergency situations. Frequently, health professionals need to consult with one another about symptoms, medical findings, and the treatment of disease. A confidentiality agreement should not prevent such consultation unless the consultation would compromise the trade secret. It is generally, but not always, the case that it is the linkage of a specific chemical with a specific facility or company that constitutes the trade secret. As the conference report states, "the confidentiality agreement should not prevent a health professional from discussing in a public forum the relationship between a specifically identified chemical and a particular disease, for example, so long as the chemical cannot be linked to the company that has claimed the specific chemical identity to be a trade secret." Of course, where such linkage is not needed in order to compromise the trade secret, or where the linkage is obvious, the confidentiality agreement may prevent such disclosure.

AVAILABILITY OF INFORMATION TO THE PUBLIC

Section 324(a) requires that emergency response plans, MSDS's, section 311(a)(2) lists, inventory forms, toxic chemical release forms, and emergency followup notices be made available to the public during normal working hours at designated locations. However, an owner or operator of a facility reporting under section 312 may request that the location of any specific chemical identified in tier II reporting be withheld from public disclosure by the State emergency response commission or the local emergency planning committee. It is recognized that while section 312 reports are not routinely filed with the Administrator, the Administrator may obtain copies of such reports in enforcing the provisions of this title, or under section 322 in the course of making trade secret determinations. If this information comes into the Administrator's possession through these mechanisms, the Administrator is also required to withhold such information from public disclosure.

CITIZEN SUITS

Section 326 authorizes persons other than the Administrator to bring suits to enforce certain provisions of title III. Section 326(a)(1) authorizes citizens to bring suits on their own behalf against owners or operators of facilities that fail to comply with certain requirements, the Administrator for failure to take certain actions, and State Governors and State emergency response commissions for failure to take certain actions. For purposes of section 326(a)(1), a State or local government may also qualify as a citizen and may bring suits. Section 326(a)(2) provides additional authority for State and local governments to bring actions against owners and operators of facilities for failure to provide information under section 322(g). None of these provisions provide for suits against local emergency planning committees.

Mr. Speaker, it has not been a smooth road that has led us to this day, but I believe that we can take pride in the result. The House of Representatives is about to vote on a bill that I believe will be a great leap forward in our efforts to clean up toxic dumps, and to protect the health and environment of millions of Americans.

One additional matter needs to be addressed. Some senior administration officials, including the Secretary of the Treasury, are urging the President to veto this bill. That would be a tragic action, particularly if the President were to pocket-veto the bill, thus denying Congress a chance to either override a veto or to revise the funding provisions. It would be tragic because a pocket veto would mean that there would be no Superfund Program when Congress returns in January. The lives of millions of Americans would be put at risk.

I deeply hope that the President will sign this bill. No words I can use, however, put the matter more passionately than those of two mothers who have lost their children to toxic waste exposure. Last week, Norine Danley Brodeur and Cathy Hinds wrote to Mrs. Reagan, asking for her help in persuading the President to sign the Superfund bill. I submit a copy of their letter at the conclusion of my remarks:

AYER CITY HOMEOWNERS ASSOCIATION,
Lowell, MA, October 3, 1986.

First Lady NANCY REAGAN,
White House,
Washington, DC:

On Behalf of Victims of Toxic Waste Exposure in the United States, we wish to request a meeting with you, the First Lady Nancy Reagan to hear our appeal to pass legislation known as "Superfund", our last hope to get America's toxic waste cleaned up. As a mother and an active crusader against substance abuse that has needlessly taken the lives of children, we believe that you can deeply understand the necessity and urgency of our plight. Many of us are Mothers that have lost children to toxic waste exposure in our communities. We ask only 15 minutes of your time to listen to our plea and urge your husband President of the United States to sign into law our last hope—Superfund. Many Members of Congress have viewed Superfund as a tax issue, this could not be farther from the truth. Superfund is a Bill to prevent the needless death of our children from cancer and other health problems caused by toxic dumps in thousands of American communities. Once again we only ask that you listen to our side—the human side—of Superfund before the fate of this vital program is decided. We have workded for 3 years lobbying our Members of Congress, paying for trips to Washington we could scarcely afford and appealing to all our government officials for help. Please don't let our efforts go in vane. Both Cathy and myself have lost children due to toxic exposure. You are our last hope. Please give myself and several others 15 minutes of your time during the 1st week of the 99th Congress. Thank you for your time and consideration.

Norine Danley Brodeur.
Cathy Hinds.

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Kansas [Mr. Slattery].

The SPEAKER pro tempore (Mr. Panetta). It is the intent of the Chair following the 2 minutes of the gentleman from Kansas to recognize the Ways and Means Committee for its time.

Mr. SLATTERY. Mr. Speaker, I rise in support of the Superfund conference report. This is a measure which has been debated for nearly 3 years.

It has strong bipartisan support, and it has the support of industry and environmentalists. The enormity of crafting a consensus bill on such a complex public health and environmental issue is a tribute to the members of the conference committee, and all the members that have worked on this legislation.

The report before us today contains a detailed, structured program which will support an effective and aggressive response to the dangers of toxic waste.

This bill forces EPA and private parties to look toward the future in devising remedies at sites which are permanent solutions.

This legislation encourages the development of alternative treatment technologies that destroy or permanently immobilize hazardous waste.

It puts EPA on a schedule so we can measure performance and progress.

It encourages potentially responsible parties to come out of the woodwork and the courts, and settle on an environmentally acceptable cleanup plan.

It protects our ground water from contamination by leaking underground storage tanks by establishing a new Cleanup Program under RCRA.

It guarantees that communities across the country will know what hazardous chemicals are produced or handled at local plants—and, it assures residents that emergency response plans will be in place should an accident occur.

It puts the Federal Government on a schedule to clean up its own hazardous waste facilities.

And, it broadens the base of Superfund support by recognizing that many industries have contributed waste to Superfund sites.

This conference report provides the direction necessary to encourage EPA, the States, responsible parties, and affected communities to act together in addressing the problem of toxic waste sites. It is built upon the understanding that we are partners in this cleanup effort—and we cannot afford to fail each other.

I have heard the rumor that several of the President's advisers are recommending that he veto this legislation. I take this opportunity to remind the President that he is the final partner in the Superfund reauthorization effort—and, he should not fail us now.

This conference report is the product of 3 years of hard, bipartisan work. It is time to stop talking and start cleaning up toxic waste sites all over our country.

I urge the adoption and enactment of the Superfund conference report. Again, I commend the conferees and their staffs for their dedication and commitment to a quality environment for ourselves and our children.

Mr. LENT. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. McCain].

(Mr. McCAIN asked and was given permission to revise and extend his remarks.)

Mr. McCAIN. Mr. Speaker, I rise today in strong support of the Superfund conference agreement, at least the program provisions. I have reluctantly concluded that I must support the revenue provisions because of the importance of this program to our Nation and its environment. However, I do have grave misgivings in this area and I believe the conferees could have done a far better job.

The conference agreement before us reflects our increased understanding of the nature of the threat we face from the thousands of toxic waste sites which litter our Nation's landscape. In this first reauthorization of Superfund we have increased the funding more than fivefold and added many substantive provisions which should improve the EPA's effectiveness in dealing with this problem. Let me make special note of certain elements in this agreement that I think will improve the program's performance over the next 5 years.

I applaud the inclusion of cleanup schedules and standards. This should give the EPA a clearer picture of what Congress intends to achieve with this program and, hopefully, will result in a better record than occured over the first 5 years of Superfund. Our environmental laws are not individual entities. Rather they should be seen as a coherent strategy with a synergistic affect. The requirement that cleanups under this program comply with all applicable Federal environmental laws makes perfect sense when viewed in this context. It also makes sense to mandate a more aggressive pace in Superfund so that leaks from these sites do not complicate other efforts such as cleaning up our country's water supplies and preventing their further contamination.

I would also like to comment on the community right to know provisions in this agreement. I did not support the provision in the House-passed Superfund measure because I believed it unworkable and likely to cause more mischief than good. I am pleased with the work done by the conference in crafting a good scheme in this area which should immeasurably assist our communities deal with potential hazardous conditions resulting from nearby chemical manufacturing operations. The new plan specifies what substances are to be covered, in what amounts, and what human health effects we are concerned with. These elements were not adequately spelled out in the House-passed measure.

I also congratulate the conferees for the increased public participation called for by this legislation. From adding chemicals to the hazardous chemical reporting list, to adding sites to the National Priorities List for long-term cleanup, to allowing for citizen suits in specific cases to ensure proper conformance with the law, our citizens are given the opportunity to be heard in the operation of Superfund. I believe this reflects the fact that every individual should be concerned and involved in the effort to identify and eliminate the toxic timebombs spread about our country.

I will not dwell too long on the bad elements of this agreement but I cannot let the taxing provisions go by unmentioned. I believe it is regrettable that we have moved away from the polluter pays concept and have imposed another tax increase on corporations who are already facing a tax increase in the next couple of years. If, as some have argued, all have us have a responsibility to participate in funding the Superfund cleanup, then we should have been honest and used general revenues. That is the broadest base tax we have. It would have been my desire to see a funding mechanism more closely approximating the Downey-Frenzel concept, which I supported. However, the importance of the program outweighs my misgivings in this area.

Mr. Speaker, overall this is a good agreement, a long overdue one that should be enacted promptly. I urge my colleagues and my President to support it.

Mr. DINGELL. Mr. Speaker, I yield 1¼ minutes to the distinguished gentleman from Oregon [Mr. WYDEN], who was a great help in handling this difficult legislation.

(Mr. WYDEN asked and was given permission to revise and extend his remarks.)

Mr. WYDEN. Mr. Speaker, I thank my chairman for yielding me this time.

Mr. Speaker, its time to put some super back in the Superfund.

Six years ago, at the close of an earlier Congress, we passed a bill called the Superfund. We were sure it would take care of our long legacy of leading landfills. But because we had no idea how big the problem was, Superfund turned out to be punyfund.

Today we are back to try again. This time, we recognize the beast for what it is. The problem of toxic chemical contamination in this country is so big, even this $9 billion bill will only address the worst of it. Perhaps it was the frustration of knowing that we could not do it all that made the conference on this bill so difficult. We had to make hard choices. But, as I think our work shows, we were committed to dealing with the problem. And we have produced a bill that will improve our cleanup program dramatically.

Mr. Speaker, several Members deserve special credit for this bill. Without the leadership and hard work of Chairman DINGELL we would not be standing here today. Mr. ECKART of Ohio and Mr. LENT put in uncounted late hours. Mr. SWIFT's work on the right-to-know provisions was essential to the conference's success. And I salute Mr. FLORIO for his unwaivering dedication to the crafting of a strong bill.

While I cannot possibly address all the features of this mammoth bill, I would like to highlight three aspects of it the might not otherwise receive the comment they deserve.

First, I would like to draw attention to the research provisions of the amendments, that, as my colleagues will remember, we wörked so hard on in the House. Under these, Superfund money will go toward developing and implementing better ways of dealing with hazardous substances. I am especially proud that the conferees elected to earmark $100 million for development of innovative technologies for site cleanups. Often our cleanups today are nothing more than toxic waste merry-go-rounds, shifting waste from one side to another, without facing the question of how ultimately to get rid of it. There is no such thing as a safe landfill, and we must discover safe ways of disposing of the waste, or ways to avoid producing it in the first place. Researchers at institutions around the country, including the Oregon Graduate Center, Oregon State University, and CH2M Hill in Oregon, are beginning to attack these problems. The research provision will help accelerate these efforts.

The bill also sets up a new EPA Office of Technology Demonstration and allows EPA to experiment with and demonstrate new treatment technologies. To coordinate research efforts, the bill sets up an advisory council through the Department of Health and Human Services.

Also, the bill calls on EPA to fund 5 to 10 regional research centers at universities or other academic institutions. These will foster the sort of innovative, practical thinking we need to solve toxic waste problems.

Though all told, research will take only a fraction of the find, it may well be the best investment in the environment that we make.

Second are sections 120 and 121 of the amendments. These increase the role of EPA and the States in Superfund cleanups at the many Federal facilities with serious contamination problems, such as the Department of Energy's installation at Hanford, WA.

The Federal facilities cleanup scheme in these sections is designed to complement the corrective action authorities in the Solid Waste Disposal Act. The scheme does not in any way override or supplant the corrective action authority that act grants EPA and delegated States. Even though section 121(e) eliminates the permit requirements for removal or remedial actions conducted entirely onsite at a national priorities list facility, a delegated State continues to have the authority to issue corrective action orders or to require appropriate corrective action for those onsite cleanups if a permit is necessary for any treatment, storage, or disposal facility on the Federal installation.

Section 120(i) is intended to make it clear that section 121(e) does not preempt the corrective action authorities of the Solid Waste Disposal Act. In the spirit of a true Federal-State partnership, section 121(i) ensures the continued authority of the States to be full partners in selecting corrective actions and setting cleanup priorities at Federal facilities pursuant to the Solid Waste Disposal Act.

Further, when a cleanup is proceeding under the Solid Waste Disposal Act's regulatory authorities, the listing on the NPL according to criteria of the Hazard Ranking System Model as published in appendix A to the national contingency plan should not result in delay of the cleanup or an opportunity to change the choice of remedy. The area that should be listed as the NPL facility is the specific waste site, not necessarily the entire installation. The Federal Government should not set facility boundaries broadly as a means to avoid State jurisdiction.

Also, section 120(a)(4) provides that State laws concerning removal and remedial actions, including State laws regarding enforcement actions, apply to actions at Federal facilities not included in the NPL. The provision is meant to explicitly waive sovereign immunity. Therefore, Federal facilities should comply with the same State requirements and be subject to the same penalties as non-Federal facilities.

True, many of the Department of Defense and Department of Energy Atomic Energy Act facilities are building weapons to assist in the defense of this country. But America is not stronger if our natural resources are poisoned in the process. We can manage these facilities to protect both the environment and our Nation's security. These amendments, together with existing Solid Waste Disposal Act authorities, will help make Federal facilities the model citizens they should be.

Finally, I would like to point out an easily overlooked provision in the bill's used oil section. In this section the conferees tried to reconcile the need to encourage responsible collection and handling of used oil with the need to see that used oil pollution is redressed. To encourage recycling or responsible disposal, we granted special status to service station operators and a few select groups, including refuse collectors picking up used oil pursuant to a State mandate. This provision is intended to promote Oregon's new system of mandatory curbside pickup of recyclable materials and to encourage other States to experiment with similar systems.

Mr. DAVIS. Mr. Speaker, I yield myself 1 minute.

(Mr. DAVIS asked and was given permission to revise and extend his remarks.)

Mr. DAVIS. Mr. Speaker, I rise in support of this important reauthorization of Superfund. It is essential that we get this vital environmental program back on track. This reauthorization includes ambitious cleanup standards, a reasonable, enforceable cleanup schedule, health assessments at national priority sites; mandatory public participation in significant cleanup decisions; and a new program to cleanup underground gasoline storage tanks leaking into our ground water. Every American citizen has a stake in what we do here today. In northern Michigan, we are dealing with hazardous waste cleanups in such areas as Marquette, Charlevoix, Oscoda, Petoskey, Houghton, and Ellsworth.

We cannot allow an aggressive Superfund Program to be delayed any longer, and I urge my colleagues to support this reauthorization.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Rhode Island [Miss SCHNEIDER].

(Miss SCHNEIDER asked and was given permission to revise and extend her remarks.)

Miss SCHNEIDER. Mr. Speaker, 6 years ago we made a promise to the American people to clean up some of the country's worst hazardous waste sites and today we have a chance to make good on that promise by strengthening the Superfund Program, but also by giving the money to the Environmental Protection Agency to do the job appropriately.

The question is, who is going to be picking up the tab of $9 billion? Last December the House very clearly said that those who make, use, or buy hazardous wastes should be the ones to bear the cost of the cleanup. It is a common sense policy, a policy that the polluter pays, has always been the cornerstone of our environmental policy. The question is, who are these polluters? Well, the Environmental Protection Agency, among others, have done numerous studies and indicated very clearly that the petrochemical industry is responsible for 70 to 80 percent of all Superfund wastes.

We can be proud of the tenacious fight that the House conferees made on behalf of that principle of polluter paying.

First on the list of achievements is the defeat of the value-added tax.

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The idea was to shift the Supefund tax burden away from the petrochemical industries and onto the backs of consumers through a regressive sales tax. That proved to be a legislative Edsel that the House just would not buy.

The bill does include, however, a broad-based tax that is tied to corporate income rather than the sale of consumer products. That is a slight improvement over the VAT. It is, however, a regrettable step away from the "polluter pays" priniciple, as it will be imposed on many companies that have no connection with the Superfund Program. I oppose it and I will vote for it with great distaste, becuase we are at the 11th hour, and the American people have waited too long for the bill.

Second, the oil companies are rightfully assessed a significant share of the Superfund tax. After all, oil is the raw material from which 80 percent of the organic chemicals found at Superfund sites are derived. Waste oils laced with contaminants have been identified at at least 153 Superfund sites in 32 States.

Finally, the oil tax will have a minimal impact on consumers. Even if all of this tax is passed forward to consumers—which is unlikely in today's soft energy market—the tax would raise the price of gasoline by no more than two to three tenths of a cent per gallon.

Unfortunately, while domestic oil is taxed at 8.2 cents per barrel, imported petroleum products are taxed at the higher rate of 11.7 cents. I see not justification for this distinction, as small as it is. I understand that it was forced on the House conferees by the Senate as the price of an agreement, and that the Committee on Ways and Means will not dignify it by considering it as any kind of precedent for any oil import fee in the future.

I regret that the conference report does not include a waste-end tax, which unfortunately became a victim of politics and the oil lobby. I want to express my deep appreciation to the House conferees, in particular my friends, the gentleman from Minnesota [Mr. FRENZEL], the gentleman from New York [Mr. DOWNEY], and the gentleman from Ohio [Mr. PEASE], who fought so very hard to keep the waste-end tax in the bill.

The SPEAKER pro tempore (Mr. PANETTA). The time of the gentlewoman from Rhode Island [Miss SCHNEIDER] has expired.

Mr. FRENZEL. Mr. Speaker, may I yield the gentlewoman 2 additional minutes from my time?

The SPEAKER pro tempore. Is the gentleman being recognized on behalf of the Committee on Ways and Means?

Mr. FRENZEL. Yes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman may yield time.

Mr. FRENZEL. Mr. Speaker, I yield 2 additional minutes to the gentlewoman from Rhode Island [Miss SCHNEIDER]. She said something nice about me.

Miss SCHNEIDER. Mr. Speaker, the gentleman suspects that I have more nice things to say about him.

Mr. Speaker, I am very pleased that we are able to push ahead the first national pollution tax out of the realm of theory and into the practical world of policymaking, and to push it to the point where we convince the administration and the House of Representatives that it was workable. In part, that may be because there is something irresistible about the inherent logic of a waste-end tax.

It recognizes that to use the land as a dumping ground for hazardous waste jeopardizes the natural envoronment, which belongs not to any particular industry, but to all the American people. It recognizes that land disposal should no longer be a right, but rather a privilege for which industry should pay. The States have been quick to recognize this principle, and waste-end taxes have been adopted in more than 20, most recently in Ohio.

Charles Darwin said, "It is the customary fate of new truths to begin as heresies." If that is so, I believe that the waste-end tax has, through the long education process that I was privileged to be a part of, become a generally accepted truth, frustrated only temporarily by the power of the special interests.

I have enough faith in our system to believe that the truth will ultimately prevail. I say, we should return. To paraphrase Oliver Wendell Holmes, Jr., the race today may be over, but the work is never done while the power to work remains.

None of us is completely content with the financing components of the conference report on Superfund, but it is critical that we put our differences behind us and vote "yes" today if we are to keep our promise to the American people.

Mr. DINGELL. Mr. Speaker, I yield 1½ minutes to my dear friend, the gentleman from Louisiana [Mr. TAUZIN], another Member who has made a very valuable contribution to the compromise and to the enactment of this legislation.

(Mr. TAUZIN asked and was given permission to revise and extend his remarks.)

Mr. TAUZIN. Mr. Speaker, I thank my chairman, and particularly my dear friend also, the gentleman from Ohio, Mr. DENNIS ECKART, for the enormous work they did, and I rise in great support of this compromise package.

Mr. Speaker, I recently had the occasion to visit the remote sensing laboratory at LSU. It was an eye opener for me. There I saw evidence of probable unreported Love Canal-type sites underlying playgrounds and schools and threatening residential communities throughout large and small cities in our country.

To those who complain that a $9 billion fund is too much, I answer shamefully perhaps it is too little.

Like my friend, the gentleman from Texas [Mr. RALPH M. HALL], I have problems with the financial package, because it does indeed impact a State like mine so very heavily. But representing a State that is heavily impacted by the crude oil tax, let me urge my President and yours not to veto this measure. It represents a compromise, as do the programmatic aspects, a pretty fair compromise, and one that will put our Superfund cleanup on track again.

To let this program expire would be

hazardous to the welfare and health of our country, and perhaps even to someone's political fortunes, and perhaps it ought to be.

Mr. President, do not veto this act. Do not let this program expire. Mr. Speaker, let us keep our options open. If a veto does come, let us have the courage to stick around long enough to undo that dastardly deed, and to put the Superfund cleanup back on track for America's sake.

Mr. DAVIS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

(Mr. SOLOMON asked and was given permission to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, I rise today in strong support of the Superfund conference report. Superfund provides the proper legal framework and musters the needed financial resources to make a frontal assault on the urgent problem of hazardous wastes.

As a fiscal conservative, I naturally examine carefully any legislation that proposes to spend billions of dollars. In this case, I sincerely believe that Superfund withstands the closest scrutiny. What we have to look at in weighing this bill is the reality that the money we spend now will save us money in the long run while at the same time improving the health and safety of our citizens.

Indeed, Mr. Speaker, in my own State of New York, in my own congressional district, Superfund is an essential device for cleaning up dumpsites and rehabilitating ground water drinking supplies. Superfund also plays a key role in encouraging the development of new disposal technologies, and guaranteeing that traditional disposal methods follow strict environmental standards.

In my congressional district only, there are some 16 toxic waste dumps that pose a distinct danger to public health and safety. Another 34 need careful investigation. The Superfund bill we are considering today would help provide the needed resources to add some of these sites, and others like them around this Nation, to the national priority list.

And indeed the Superfund itself is a national priority. The bill took this Congress a long time to develop but its effects will extend for generations to come.

I urge its adoption.

Mr. DAVIS. Mr. Speaker, I yield 2½ minutes to the gentleman from Washington [Mr. MILLER], a distinguished member of the Committee on Merchant Marine and Fisheries.

(Mr. MILLER of Washington asked and was given permission to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Speaker, I rise in support of the reauthorization of the Superfund Program. Let us face it, for over a year, Congress has been playing chicken with a program which is vital to the improvement of our Nation's environment. But, finally, today we are telling the American people that they can have confidence that Superfund will be there to clean up toxic waste dumps from Love Canal to Puget Sound.

This Superfund bill contains tough cleanup schedules and standards, and ensures that the public has the right to know what chemicals threaten public safety. Most importantly, Mr. Speaker, this program is adequately, but not excessively, funded to make substantial progress toward cleaning up sites across the Nation.

The conferees needed some prodding and pushing along the way, but they delivered a reasonable bill. This bill will help restore 600 sites across the Nation over the next 5 years and get us organized to address the remaining 22,000 sites. In my district I have two sites proposed for the national priorities list: one at the Naval Undersea Weapons Station at Keyport, and one at Eagle Harbor. There are other sites around the Pacific Northwest which also concern me. My constituents want these dump sites cleaned up, and they want dump sites across the Nation cleaned up.

Mr. Speaker, we want a strong Superfund bill, we are going to pass a strong Superfund bill, and I hope that my President will sign a strong Superfund bill.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Illinois [Mr. BRUCE].

(Mr. BRUCE asked and was given permission to revise and extend his remarks.)

Mr. BRUCE. Mr. Speaker, I would like to commend the gentleman from Michigan [Mr. DINGELL], the gentleman from Ohio [Mr. ECKART], the members of the committee, as well as our friends in the other body for their diligence in working out a successful compromise on this vital piece of legislation.

My congressional district is a microcosm of the Nation's toxic waste dilemma. We had one of the worst sites on the national priority list in

Greenup, IL. At the same time, we have businesses in Douglas County and Clark County that could not have survived some of the proposals made for financing the Superfund.

Yet, we are committed to both a safe environment and a strong industrial base.

This bill contains stringent cleanup standards, tough cleanup schedules, expanded health protection, and public participation requirements, a comprehensive community right to know provision, and a new program for cleaning up leaks that may seep into our ground water.

In addition, it provides a fair mechanism for funding these vital programs without resorting to the general income tax.

This bill combines safety and fairness with aggressive action.

I congratulate the committee for drafting it, and I ask my colleagues to join me in supporting it.

Mr. JONES of North Carolina. Mr. Speaker, I rise in strong support of the conference report on H.R. 2005 and urge its prompt passage.

First, I want to express my appreciation for the hard work of the chairman of the conference, the gentleman from Michigan [Mr. DINGELL]. Without his tireless efforts, we would not be this close in making fundamental changes to the Superfund law.

The many committees involved in the conference posed a difficult challenge, made more so by the importance of the issues before us.

For my own part, and on behalf of the Committee on Merchant Marine and Fisheries, I extend our appreciation for his diligence and leadership.

I also want to recognize the work of several other members, including the former ranking member of my committee, the gentleman from New York [Mr. LENT]. Others deserving of our appreciation include the subcommittee chairman, Mr. FLORIO, and the leadership of the Public Works Committee, Congressmen HOWARD, SNYDER, ROE and STANGELAND. These, and my colleagues on the Judiciary Committee, all worked long and hard for this day.

Mr. Speaker, the Merchant Marine Committee originally became involved with H.R. 2005 because of our jurisdiction over natural resource matters, the U.S. Coast Guard, and marine pollution. Earlier in this Congress, our committee sponsored numerous amendments to the bill dealing with these areas.

I am happy to say that the large majority of those amendments remain in the conference report and I thank my colleagues in the conference for their support. Although my comments today will be brief, I direct my colleagues to the report of the Merchant Marine Committee for additional explanations of the amendments.

One major thrust of our amendments is to coordinate the natural resource program authorized Superfund with the remedial program of EPA. This coordination is intended to increase the efficiency and effectiveness of both aspects of the program which, today, have not been well coordinated.

A second objective is to improve the rules governing the emergency response of the Coast Guard for spills into navigable waters.

A third set of amendments is intended to clarify several important issues relating to ocean incineration. All have been incorporated into the final conference agreement.

There is, Mr. Speaker, one major disappointment in the Superfund conference. I am referring to the refusal of the other body to act on the oil spill proposals which the House had included in the Superfund legislation.

Our committee, along with the administration, believes that a major revision of our oil spill laws is needed, and I am sorry that we were not able to accomplish it in H.R. 2005. In the remaining days of this Congress, however, I hope that we can find the time and the will to enact a separate oil spill measure.

Mr. Speaker, much hard work has gone into this Superfund conference report. The program has seen too much delay as it is.

I certainly hope that we can act quickly on H.R. 2005 and send it to the President for his signature. I urge my colleagues to support this conference report.

Several of the Merchant Marine Committee amendments deserve mention. First, as I have already noted, the conferees have sought to coordinate the national resource program authorized by CERCLA with the remedial program of EPA. The conferees have adopted an amendment to section 104(d) to require notification to Federal trustees of potential natural resource damages as soon as possible so that the trustees may participate in the planning and conduct of RI/FS from its inception. This amendment, as well as the many others mentioned below, are to apply at the time of enactment unless otherwise specified. They are to apply to all ongoing CERCLA actions, regardless of their stage of development.

Similarly, the conference report requires EPA to notify all Federal trustees of any efforts to negotiate cleanup agreements with responsible parties where there may be damages for natural resources. In order to facilitate a coordinated Federal effort, EPA, the Department of Justice and the Federal trustees should cooperate early—before negotiations begin—and throughout the process to maximize the effectiveness of the Federal effort. Early participation will enhance the prospects that satisfactory agreements may be concluded whereby protentially responsible parties undertake or finance the assessments and restorations required by the act.

Balanced against the need for close coordination is the recognition by the conference report that the principal responsibility for assessments and restoration lie with the appropriate Federal or State trustees. Thus, for instance, the conference report clarifies in section 122 that only trustees are authorized to negotiate with responsible parties for the conduct of assessments and restorations. The conference report also emphasizes that a covenant not to sue may be agreed to by a Federal trustee only if the responsible party agrees to restore, rehabilitate or acquire the equivalent of damaged natural resources. Section 122(f) demonstrates, simply, that the trustee may not delegate its fiduciary responsibilities to a responsible party, but that it may enter into an agreement with that party for the carrying out of those responsibilities. The exercise of discretion relating to the trust must remain with the trustee, while ministerial functions may frequently be performed more quickly and efficiently by the PRP.

This principle extends to actions taken on Federal facilities. As reflected in the conference report, the Administrator of EPA and the Federal Land Manager is required to consult with and take into account the recommendations of the Federal natural resource trustees in developing plans for remedial actions for sites on Federal facilities where damages to natural resources may have occurred. The Administrator and the Federal Land Manager are also required to notify the appropriate natural resource trustee of interagency group negotiations to develop an RI/FSS and encourage those trustees to participate fully, as may be warranted by the injuries to natural resources on the site itself or in connection with the site.

The conference report encourages in several instances the undertaking of prompt, adequate damage assessments. Thus, while the conference report requires that trustees exhaust all remedies for recouping damages from PRP's before filing claims for the same against the fund, it also clarifies that the exhaustion requirement shall not apply claims for assessment funds. Nor is the exhaustion requirement intended as "preauthorization" authority whereby EPA could insist upon a "preapproval" of any claim prior to the filing of the claim.

Similarly, while the conference report authorizes the President not to pay claims for restoration costs if all available funds are required for public health threats, the conferees intend that the President ensure adequate yearly funding for all anticipated claims for assessments. As EPA has noted:

> The most cost-effective use of limited fund resources may be to provide funding to a trustee for an assessment (instrumental in many cases) and then encourage the trustee to institute a court action * * *.

The conference report contains several important amendments to section 107 relating to natural resources. First, the amendment to section 107(d) on rebuttable presumptions clarifies that these presumptions are available to Federal or State natural resource trustees who conduct assessments in compliance with regulations under section 301(c). Second, the amendment to section 107(f) clarifies that sums recovered by trustees are to be used only to restore the natural resources without further appropriation. The amendment reflects the restitutionary nature of the natural resource regime of CERCLA. The natural resource regime is not intended to compensate public treasuries. Nor are recovered damages to be diverted for general purposes. The purpose of the regime, rather, is to make whole the natural resources that suffer injury from releases of hazardous substances. Of course, the trustees may use such sums to reimburse them for the costs associated with recovering such damages, including the costs of damage assessments.

Third, the amendment also prohibits double recovery for natural resource damages. Section 107(f), as amended, provides that the measure of damages shall not be limited to the sums which can be used to restore natural resources, but that there shall be no double recovery in calculating such damages. The basic measure of damages under CERCLA, as it is under the Clean Water Act, is the costs of restoration, replacement or acquisition of the equivalent of natural resources injured by unlawful releases. Where, of course, restoration is technically impossible or the costs thereof are grossly disproportionate to the value of the resources to society as a whole, then other valuation measures, both market and nonmarket, must be used.

The value of lost uses between the release and completion of the restoration should also be accounted for; hence the proviso that the measures need not be limited by the costs of restoration. In no event, however, should double recovery occur under the regime by way of double counting in the initial valuation or by way of multiple claims for the same damages.

The last amendment contained in section 107(d) of the conference report extends the deadline for promulgation of natural resource damage assessment regulations under section 301(c) or CERCLA. The purpose of extending the time for promulgating these regulations is to allow the Department of the Interior sufficient time to revise their regulations as may be necessary and to account for the amendments in this act.

The conference report contains several significant modifications to the time limits for filing claims and for initiating lawsuits for natural resource damages. Where EPA is "diligently proceeding" with an RI/FS for a site on the NPL, the statute of limitations bars a natural resource action until the RI/FS is concluded. The purpose of this provision is to further integrate the remedial investigations under section 104 with natural resource assessments and the selection of a remedial plan itself with the selection of a natural resource restoration plan. The term "diligently proceeding" is intended to be strictly construed and require the vigorous and active conduct of an RI/FS through the significant commitment of time and agency resources to the effort. The concept was originally derived from a similar limitation proposed in section 310(D)(2)(c) of H.R. 2005 (citizen suits), as reported by the House Committee on the Judiciary.

This bar to a natural resource damage action until the RI/FS is completed is not intended to preclude an action governing that portion of a site not addressed by the RI/FS or, similarly, to preclude an action until the entire RI/FS for the whole site is completed where the cleanup is being undertaken in distinct and separate phases. In maintaining this distinction, this provision is comparable to the circumstances whereby preenforcement review is permitted for a distinct and separate phase of a cleanup, as explained in the conference report accompanying section 113(h).

Finally, the conference report contains several amendments in section 127 relating to ocean incineration which originated with the Merchant Marine Committee and which require elaboration. First, the amendments raise the liability limits or incineration vessels and direct administration to establish levels of financial responsibility commensurate with the financial responsibility required for other activities posing similar risks. The conferees recognize that the two principal components of ocean incineration are the incineration activity itself and the transportation of hazardous materials. Accordingly, the conferees anticipate that the administrator shall establish evidence of financial responsibility that is commensurate with the financial responsibility associated with these other activities.

Second, the conference report contains an amendment to section 106 of the Marine Protection, Research and Sanctuaries Act that is intended as a new savings clause for the statute. The purpose of the Amendment is to overturn a series of cases that have construed the preemptive reach of the act to broadly. The amendment is intended to make clear that Congress rejects these interpretations and intends that the preemptive reach of the MPRSA be narrowly construed.

The amendment establishes the general rule that State laws, standards, or limitations are not preempted by the act. The amendment also establishes that remedies for damages under other Federal law, including maritime tort law, are not preempted where there is noncompliance with an ocean dumping permit. Not only does this amendment overturn judicial decisions broadly construing the preemptive reach of the act, but it creates a strong presumption against preemption.

This presumption against preemption requires a correspondingly narrow construction of the reach of section 106(d) of the MPRSA, which prohibits States from regulating ocean dumping. Where there is a potential conflict between a State authority governing environmental quality, public health, or public welfare and the prohibitions in section 106(d), the presumption favors the continuing validity of State law.

Similarly, enactment of the MPRSA is not to be interpreted as revoking, by implication, other Federal statutes. Where, for instance, the Endangered Species Act, the Fish and Wildlife Act, or the National Environmental Policy Act [NEPA] require Federal decisionmakers to consider certain specific factors, these statutes apply to actions under the MPRSA with full force. Similarly, where the coastal zone management act [CZMA] requires Federal activities, or private activities authorized by Federal permits and licenses to be consistent with approved State coastal programs, these requirements of the CZMA apply with full force to site designation and permitting actions under the MPRSA.

In addressing the matter of ocean incineration in this conference report, the conferees have attempted to resolve certain outstanding issues relating to liability, financial responsibility, third-party damages, the preemption of State authorities and the relation of the MPRSA to other Federal authorities. The conferees believe that, with these clarifications, the EPA should proceed promptly with final regulations for ocean incineration without reproposing those regulations. The conference report itself states that "[T]he Environmental Protection Agency should proceed promptly with its final regulations for all types of ocean incineration permits." The reference to final regulations rather than reproposals is intended to buttress this intent. The conferees expect EPA to act accordingly.

Mr. DAVIS. Mr. Speaker, do I have 1 minute left?

The SPEAKER pro tempore. The gentleman is correct.

Mr. DAVIS. Mr. Speaker, I have no requests for time under the Committee on Merchant Marine and Fisheries, so I ask unanimous consent to yield back 1 minute to the gentleman from New York [Mr. LENT].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

□ 1710

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Massachusetts [Mr. BOLAND].

Mr. BOLAND. Mr. Speaker, I appreciate the gentleman's yielding me this time.

Mr. Speaker, I rise in strong support of this bill and urge every Member in the House to support the bill. The controversy over Superfund reauthorization has been raging for almost 2 years. I know there are some provisions in this bill and the accompanying taxes that some Members don't like. I think the authorizing committees have done a good job. They have hammered the problems out and come up with an overall bill that is balanced and sound.

And most importantly, this provides a 5-year authorization and taxes for the program. This is what EPA needs. The Appropriations Committee has come to the rescue twice with short-term extensions over the past year—but the time for short-term extensions has passed. The last year has been crippling for Superfund. If we are going to start cleaning up hazardous waste sites across America, what we need is a 5-year bill with a guaranteed source of revenue.

I know the White House has indicated it has some problems with the tax package. But I would respectfully urge the President to look carefully at this bill on balance, it's a good bill—A bill which deserves to be signed. It's good for the environment and in the long run I think it will be good for business. When you look at the taxes that are drawing all the criticism, we are only talking about $1.5 billion a year in taxes. This amounts to a rounding error within the overall tax reform package we just passed.

The Ways and Means and Finance Committees had a tough time coming up with this package. No one wants to pay the bill, but hazardous waste is a fact of life. Somebody has got to foot the bill, and I think the package the tax committees have put together is a fair one and a balanced one.

Yesterday, the Appropriations Committees agreed at conference to a level of $1.4 billion for Superfund in 1987. The program is ready to go—but it can't go anywhere without reauthorization. I would urge you all to support the bill, and I certainly hope the President will see fit to sign the bill. It's time we put the Superfund Program back on track.

Mr. DINGELL. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, my colleagues should know that during the time that we have been trying to extend the Superfund statute, that the work of the gentleman from Massachusetts [Mr. BOLAND] and his subcommittee has been absolutely critical to keeping the program going. I want to commend the gentleman and thank him for his labors.

Mr. BOLAND. I appreciate the kind remarks of the distinguished chairman of the Committee on Energy and Commerce.

The SPEAKER pro tempore. (Mr. PANETTA). The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 17½ minutes on behalf of the Committee on Ways and Means.

Mr. ROSTENKOWSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask my colleagues to support the conference agreement on H.R. 2005.

The House-Senate agreement on Superfund came hard. It began with the House defeat of last year's compromise over the Senate's insistence on a value-added tax.

In the months that followed we conferred with many outside interests both for and against the concept of such a trust fund. In the end we devised a formula that satisfies the revenue demands of the program—yet favors none of the interests that must pay the fare.

The package is not precisely what the House went after. That's the price of any negotiation. But the agreement comes far closer to the House starting point than the Senate's.

Let me underscore the fact that this legislation does not contain a value-added tax. The original Senate bill included a VAT to raise $5.4 billion of the revenue needed for Superfund.

There is no new regressive excise tax

in this bill. The broad-based component of this bill imposes a tax on the corporate alternative minimum tax base sufficient to raise $2.5 billion over 5 years. All companies would be allowed to exclude alternative minimum taxable income below $2 million.

The agreement reimposes the former Superfund tax on chemical feedstocks to raise $1.4 billion. To help provide trade neutrality, a new tax would be imposed on imported chemical derivatives and a tax credit would be provided for exported chemical derivatives starting in 1989.

Under the conference agreement, the chemical feedstock taxes previously imposed on xylene are to be refunded or credited to the original taxpayers. To compensate for lost revenues, the tax rate on xylene is increased temporarily for the duration of the 5-year reauthorization period.

Section 513(h) of the conference agreement provides that rules similar to section 6416(a) of the code shall apply in determining the refund of tax on xylene for liability arising before October 1, 1985. It is the intention of the conferees that in the case of a sale of xylene for export by the purchaser, a credit or refund shall be allowed or made if the person who paid the tax establishes that he has not collected the amount of the tax from the person who purchased such article. The conferees understand that the world spot market price during the period the tax was imposed did not include the domestic tax on xylene. The necessity for clarification arises because exports of feedstock chemicals were not exempt from tax contrary to manufacturers' excise taxes imposed under chapter 32.

The former Superfund tax on petroleum would be imposed at a higher rate to raise $2.75 billion. The tax on domestic oil would be imposed at a rate of 8.2 cents per barrel while the tax on imported oil would be at a rate of 11.7 cents per barrel.

This 3.5 cents per barrel differential, when spread over the 42 gallons in a barrel of oil means a less than one-tenth of 1 cent difference in the per gallon tax liability of domestic and imported oil.

The oil industry will be required to pay its fair share of the funding liability under this bill. The Senate bill originally would have raised only $200 million from the oil industry. The House bill would have raised $3.1 billion from oil. The conference agreement, which raises $2.75 billion from the oil industry, is much closer to the House position. In addition, the domestic oil industry will be subject to the environmental tax on minimum taxable income just like any other industry.

The House held on to the waste-end tax until the very last offer. It was the sacrifice that sealed the compromise. The tax was environmentally sound—but politically flawed.

The Superfund taxes together are designed to raise $6.65 billion over 5 years. The bill also authorizes $1.25 billion in general revenue to be deposited into the fund. When combined with interest and recoveries, the Superfund total would reach $8.5 billion over 5 years.

In addition to Superfund revenues, revenues would be provided for cleanup of leaking underground storage tanks. Motor fuels would be taxed at one-tenth of 1 cent per gallon over 5 years in order to place up to $500 million into the new leaking underground storage tank trust fund.

The bill would also repeal the Post-closure Liability Trust Fund and tax. The oil spill liability trust fund and tax which had been included in the House bill were deleted since the program provisions had also been dropped.

Mr. Speaker, the fundamental choice we face is whether the House is willing to raise the revenues to support the largest environmental program in years.

The Senate just voted 88 to 8 to accept the revenue package.

The vote belies the difficulty in bringing the Senate to the negotiating table—and then extracting a compromise that raised the tax on big oil.

This compromise makes no one happy. It deals out rough justice to a broad spectrum of interests whose products have led to the proliferation of hazardous wastesites.

My colleagues on the Energy and Commerce Committee struggled for months to produce a compromise that justly intensifies the campaign against toxic waste. That done, it fell to us to raise $8.5 billion over 5 years.

Our response is a combination of taxes that meet the revenue target—and do it as fairly as possible.

My colleagues, the vote on Superfund is the measure of our commitment to a clean environment.

The President has threatened to veto our work. It is not enough to just get it to the President with a majority. The Senate was very clear on this point. They provided more than the margin to expand—and fund—the cleanup of America's wastesites.

This is the vote that counts. We need well over two-thirds—not just to stay the President's veto pen—but to record this Congress once and for all as proenvironment and profuture.

If we don't provide that margin, we will have failed to make that declaration.

Mr. FRENZEL. Mr. Speaker, I yield myself 5 minutes.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, I concur in the description of the bill which was given by the distinguished chairman of the Ways and Means Committee. Our committee is not an expert on the program side. We were concerned only with financing.

My first preference is the House financing package which was sustained three times in this House by strong majority vote. The broad-based tax is not a good way to fund, not the best way to fund the Superfund because it abandons the theory of linkage which we established when we passed the first Superfund.

We also should have had the House waste-end tax. It is a good way to finance because it establishes a different form of linkage but a good form of linkage.

Finally, Mr. Speaker, the differential tax on imported oil is something that the House conferees swallowed with great distaste. But it seemed to us there was no other way to settle the matter than to let that one become a part of the package. The Senate's financing in the Senate bill was mostly a VAT tax or a business-transaction tax. It was inevitable that they were able to get some sort of broad-based tax, and our committee had to agree to this modest—what I call a corporate surtax. The other body insisted, and we split the difference on the tax. My judgment is that the House was more mindful of the urgency of the need to complete and get this program going or rather to keep it up and going than perhaps the other body was.

But I do want to dwell just for a moment on the broad-based tax.

□ 1720

The Legislative Digest of the House Republican Conference called it today "a value-added tax on manufacturers and raw materials producers." That is not true, Mr. Speaker.

What this tax is, or how you compute it, is that a corporation first computes its regular taxable income before net operating losses. Then it adds the preference items, the accelerated depreciation, the expensing of R&D costs, the intangible drilling costs, percentage depletion, or whatever; and that establishes a tentative alternate minimum taxable income, which is itself subject to the $2 million exemption mentioned by the chairman.

Then one-half of the difference of the book income compared to minimum taxable income is added if the book income is greater; and then the minimum tax is paid on that balance at a rate of 0.012, or $12 per $10,000.

That becomes not a VAT, not a BTT, not even a consumption tax. The best description I can think of is that it is a surtax, although it has some of the trappings of an earnings-and-profits tax; and under the tax reform bill that we have just passed, the book income section becomes displaced by an earnings and profits tax, in 3 years.

Mr. Speaker, I said before, the House was more mindful of the urgency than I thought the other body was, and yet the other body voted for this bill, 88 to 8, I am told. I think it is fair to note that the conferees on the House side, of the conferees, 7 of the 9 of them signed the conference report.

This is a very high priority item. The Committee on Ways and Means was cognizant of the fact that the other committees had worked hard to build a good program compromise; and it involved lots of compromise.

There are a number of things in there that I think could be improved that every Member of this House would like to see different. Nevertheless, it was our job to provide the financing. For people who do not like what we have brought in front of them today for a tax program to sustain the other programmatic aspects of Superfund, I challenge them to find another way to finance it.

This is the best we could do between the two bodies. It is a satisfactory compromise. I believe it should be passed. In my judgment, this is a terribly high priority item. I hope the bill will be passed by a large majority and that it will be signed by the President after he gives full consideration to the fact that it will not become any easier next year, and that this bill is an acceptable compromise.

Mr. Speaker, I reserve the balance of my time.

Mr. CRANE. Mr. Speaker, I yield as much time as he may consume to the gentleman from Nebraska [Mr. DAUB].

(Mr. DAUB asked and was given permission to revise and extend his remarks.)

Mr. DAUB. Mr. Speaker, before I proceed to use some time to talk about title 5 and the tax section, I would like the opportunity to enter into a colloquy with the distinguished chairman of the Committee on Ways and Means, if he would allow me that opportunity.

A number of my colleagues, and interested members of the public, share my concern that the broad-based Superfund tax may result in higher consumer prices for necessities such as food. The conference agreement provides that the broad-based Superfund tax is deductible for Federal income tax purposes. It is my understanding that the reasons for a deductible broad-based Superfund tax include a desire to mitigate the potentially regressive impacts of this tax. Is this correct?

Mr. ROSTENKOWSKI. Yes. The conference committee was aware of these concerns and took them into account when deciding that the broad-based Superfund tax should be deductible.

Mr. DAUB. I thank the gentleman for the clarification. That will be an important part of the record on this matter.

Mr. Speaker, let me spend a little time talking about title V and why I think that the contents of that portion of the bill that fund what are otherwise, in my opinion, very appropriate improvements and increases in the level of activity that we must have to suggest an answer to my friend, the ranking member, Mr. FRENZEL, who posed the question:

But then those who would oppose this bill and if, for the reason particularly, the tax section in it, the revenue section, what would their alternative be, and is that doable in the week or two or three remaining for this Congress at this point in time?

First I think we should put on the record the actual amounts that are involved. Different Members of the Congress have, during this debate, indicated what they are, but so the public has a better understanding of it as well, let us break down the taxes that are contained in this Superfund financing agreement.

First, a crude-oil tax. The total amount of revenue to be generated from that is equated to $2.75 billion. It will be achieved by levying an imported crude-oil tax of 11.7 cents per barrel, that would be the rate; to raise approximately $1.5 billion, and a surtax or a rate of 8.2 cents a barrel on domestic crude oil and refined byproducts thereof, for a total of approximately $1.25 billion.

There is a chemical feedstock tax that raises, it is estimated, $1.4 billion. There is a general revenue section that takes from the actual Treasury itself, nonappropriated funds, $1.25 billion.

Cost recoveries in the cleanup process; fines and other things, I imagine, would amount to $0.3 billion. The interest on unspent amounts in the fund would amount to $0.3 billion. A new tax that would amount to a tenth of a cent per gallon on motor fuels would fund a program for the underground storage and leaky tank program, referred to often as LUST at half a billion dollars.

Then this so-called broad-based tax, which is supposed to generate approximately $2.5 billion. This would be, I think I would agree, a combinaton of, intellectually, a surtax; the idea of a profit and earnings base—in fact, if it is not anything closer to it, it must be soulmate of a VAT if it is not a VAT; because it takes the intellectual pursuit of that and simply reorganizes it into a .12 percent of the alternative minimum tax.

Now that alternative minimum tax idea is of course a part of the income tax. It is an increase in the corporate rate, because it increases the amount due under the alternative minimum tax calculation. That would amount to $12 for every $10,000 of income subject to the alternative minimum tax for companies that earn over $2 million in gross sales.

That would be the function, with the understanding that this is supposed to raise $9 billion, my estimate on a healthy economy, an economy that would not change too much, and current rates of inflation, interest rates and/or employment levels, we will generate over the 5-year period I would estimate something closer to $19 billion. That this particular combination of six sets of taxes will generate not $9 billion, but closer to $19 billion in taxes.

What you are looking at in title V, I say to my colleagues, is a cash cow. A vehicle through which not only the expanded Superfund Program can be funded, but indeed, all sorts of other ideas that may be lying in the wait.

I guess what my disappointment amounts to is that the House caved in on its view of how we should approach the laying in of the additional revenues I, too, agree were needed to fund this piece of legislation.

There is no waste-end tax; that is gone. We have not maintained the idea that there ought to be a fairly direct connection between those who pollute and those who ought to pay.

I think it is very difficult for many of our colleagues who are in areas that depend for their refined byproducts from imported crude to take on the idea that they have got to go home and talk to their constituents and explain to them that not only will their motor fuel costs go up, not only will generally all their costs of other goods that they buy go up, but they are going to have to pay an awful lot more for their home heating fuel, because the differential tax of 3.5 cents that will be laid onto the imported barrel and its refined byproducts amounts to a home heating fuel tax.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, had we included this in comprehenisve tax reform, during our debates on how to guarantee revenue neutrality, could we not have incorporated this, and in the process, with the anticipated increased revenues, saved IRA's for all working Americans?

Mr. DAUB. Mr. Speaker, the gentleman makes a good point. The fact of the matter is, the basic book-value calculation that is now in the tax bill yet to be inked by the President contains a function of a conversion of that basic calculation for the basic tax for companies or the alternative minimum tax that converts to a profit and earning tax 3 years later.

□ 1730

Had this concept been kept in the bill, it may very well have been possible to lower the revenue expenditures from tax reform and take into account the opportunity to fund many of the things that we would like to have seen in the tax bill.

Certainly one might argue that the tax bill as passed has become the stalking horse for those who had the idea that they could hold off a Superfund agreement on the tax bill long enough to lay the groundwork for this new tax to be included in the Superfund bill.

Since the Downey-Frenzel amendment has also been lost and the waste-end tax has also been lost, we are now looking at a home heating fuel tax, a motor fuel tax on everybody who buys gasoline for cars and for farming and for agriculture, and I think something else really has to be pointed out. While I have not been a supporter of a broad-based tax, the broad-based tax in this bill is even less satisfying than the previously proposed VAT tax.

For all of its faults, the VAT tax proposals were at least trade neutral, trade neutral, and it was less likely to drive American industry, particularly the petrochemical industry, offshore and lose the thousands and thousands of laboring jobs that go to the cracking, processing, refining of crude oil in this country.

It seems to me that as we now look at the configuration of the taxes contained in title V of the bill, we have certainly created a very serious problem for trade. You have a cheaper rate of differential on the domestic crude barrel and a more expensive rate on the imported crude barrel. What does that mean? What it might mean to those who have somewhat of a thought that this was put together to cook a deal, one might think if there was a chemical feedstock tax and a broadbased tax laid on the oil industry in America for the purpose of helping repay them for that agreement, they are going to turn around and collect more off the imported barrel and essentially pay back the oil and chemical industry for the other taxes that have been laid upon them. What a deal, what an alliance, what a compromise. What strange bedfellows we find.

We find the environmentalists in bed with the domestic oil companies in this country. Strange bedfellows for a

Superfund bill.

It seems to me that this is as a result very GATT violative and creates a number of other serious problems for us as we become less competitive in America as a result of the addition of the differential on imported crude versus domestic, the feedstock tax, the broad based tax and its alternative calculation and indeed, as well, the increase in the motor fuel tax from the law's provisions.

For many of my colleagues who think that the vote today on this conference report would be difficult to reconcile with some of the other rhetoric we engage in around here, let us take a look at those Members, evidently some 90 to 120 who have signed the Walker resolution, asking the 100th Congress to avoid a tax increase. I think most of those Members would feel the same way about the current Congress right here at the tail end of business before the tax reform bill is even signed by the President we are engaged in laying upon the American individual and upon American business, upon the consumers of our country, a tax increase.

For instance, it would seem to me inconsistent that any Member signing the pledge not to increase income taxes allowing the bill tax had just been voted upon now earlier to turn right around a week later and vote to raise $2.75 billion in a petroleum tax and $2.5 billion in corporate taxes most of which will be passed through in terms of the consumer, right down to the price of a loaf of bread or the price of a gallon of gas at the pump.

Similarly, if a Member intends to return to his or her district and claim that they never voted for a tax increase, this is not a conference report that you can vote for. How is it that Congress can suggest that there is not enough money in the budget for revenue sharing and other programs but have an additional $3.2 billion to add to a request for Superfund?

I want to address for just a moment the idea of how we might pay for this if we did not do this. Now, I realize that our conferees had some very difficult choices to make and that it is not necessarily very easy to come to a conclusion on the bill. How many Members have already stood here in the well today and said, "I am going to have to vote for this bill but I don't like it" for a variety of reasons, but principally for the tax reasons? I do not know that that is a very good way to want to have to face your record: "It is a bad bill but."

Who are we afraid of?

I offered the following concept in a proposal before the Ways and Means Committee, and that proposal failed by one vote, by one vote.

I think it is salient because I think it gives a very good answer to my colleagues who wonder if they voted "no" on this bill how they could come back in the next week or 10 days or 15 days that we will be in session and try to figure out what they could do to have a reasonable bill, a reasonable funding mechanism.

We could have $8.5 billion of hard money, hard money, hard cash by phasing out the annual Superfund level, by using the chemical tax, the feedstock tax, the waste-end tax and general revenues to reflect the abilities of the Environmental Protection Agency to administer the fund while reaching levels consistent with that goal of $8.5 billion over a 5-year reauthorization period.

This would require lower total revenues and yet meet the long-term objectives of the environmental groups going into the next reauthorization. Use substantial borrowing authorities and general revenues during the phase up to permit EPA the maximum flexibility of expanding the program without committing more tax revenues than are actually needed and include a dry weight waste-end tax in a reasonable amount to encourage effective waste management.

The President has been implored by a number of our colleagues today to avoid doing this piece of legislation in by exercising a threatened veto.

The President has been very clear through his spokespersons at the White House to indicate that he favors the program improvements, the increase in the expanded parts, the subsidy parts of Superfund, but does oppose new taxes especially the broad based corporate levies that would require all firms with a taxable income over $2 million to pay on that at a rate of $12 for every $10,000 you earned. I think the President has very strong feelings about the need for responsible reauthorization. One cannot just look at it in a vacuum and consider only the subsidy portions can be authorized without the funding mechanism that is appropriate.

He has indeed proposed that. I

would like to suggest that, if we can fund the continuing resolution just as we are to fund all the rest of the Government's activities, and we have been able through extensions to fund Superfund and allow new sites as well as old sites to continue to be added to the list and for cleanup to continue, that we can indeed pass the subsidy parts of this bill if the veto is sustained and go on to find the funding necessary for a year and a half or so right in the conference on the continuing resolution that is fenced off now but that could be unfenced to provide the necessary funds to operate the Superfund Program at the increased levels required by the substitute parts of the conference agreements.

I do want to say that it is not an easy task nor an assignment that I relish to speak in this particular way because I do think the Committee on Ways and Means labored hard and long to try to come up with their best answer to meeting the substantive requirements of the other committees of jurisdiction. I do know particularly that Mr. Dingell, Mr. Eckart of Ohio, Mr. Frenzel, Mr. Downey of New York and others worked very, very hard on this bill to try to pull the bill together that was doable, considering the very serious nature and explosive nature of toxic waste site management problems that we face.

I had the opportunity when I was in another world to serve on our Nebraska Environmental Control Board for 2 years. I had a chance to learn about toxic waste management, dump site cleanup, particulate emissions, point and nonpoint sources of pollution and what we needed to do to fund it. So I think the bill by and large is a good bill. I think the mechanism to fund it does not meet this Congress' objectives in its fines hour to do what is right by the American consumer and the American taxpayer.

So with those comments in mind, may I urge my colleagues to cast a "no" vote, not because they are opposed to the idea of getting on with the very important requirements of cleaning up this country's dump sites and solving the problems we have for consumers' rights to know and other things, which I think are very good parts of the bill, but I want to remind my colleagues there are a number of other groups that share the views I have tried to express here today. Among them are the National Taxpayers Union, which is opposed to the bill for many reasons, as I have indicated, the American Petroleum Institute, the National Retail Merchants Association, grocery manufacturers of this country.

I notice my colleague, Mr. Downey of New York, who has labored hard and long is on his feet and perhaps would like to address the gentleman or perhaps ask me a question.

Mr. DOWNEY of New York. I thank the gentleman for yielding.

I want to also commend the gentleman because he worked hard in the committee. He raised one or two points that I think are for clarity and because he is, I think, a man of precision and I do not want him to be imprecise when he suggests that this bill could raise $19 billion.

The gentleman is aware, of course, that once we get $8.5 billion, the taxes shut down. So there is no opportunity here for a super revenue raiser.

That is No. 1. No. 2, I would submit that economically if the minimum taxes raise that much money or the other taxes involved, we would have a far more robust economy than any of us are looking to. We would have no problem with the deficit or anything else of that nature. This is a bill designed to raise the amunt of money that we have set out and no more.

I just want to make sure that the gentleman is aware of that and all the others who are watching.

Mr. DAUB. I appreciate the clarification of the gentleman.

I want to point out because of my great concern, and I know it is his, that in the tax bill we have a base called "book" that will convert to profit and earnings before this Superfund authorization bill expires that will cause the Ways and Means Committee, in my opinion, to have to come back and revisit the tax mechanism. I also believe, in response to the gentleman's point, "what this place giveth, it could taketh away." The function of whether or not there is a cap or a limit as revenues are generated or not might become an interesting question, a very interesting question on the floor of the House if we did not deal with it now instead of later.

I thank the gentleman for his point.

At this point I have nothing more to add to the debate.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PANETTA). The gentleman has consumed 18 minutes.

The gentleman from New York [Mr. DOWNEY] has 8 minutes remaining.

Mr. DOWNEY of New York. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. PICKLE].

(Mr. PICKLE asked and was given permission to revise and extend his remarks.)

Mr. PICKLE. Mr. Speaker, when we started the Superfund debate, we all agreed that more funding was necessary to clean up our worst abandoned hazardous waste sites. However, the line between the groups was clearly drawn as to who ought to pay for the cleanup. I am happy to say that after a long and exceptionally difficult debate, we have reached a reasonable compromise on this matter.

I think perhaps the most significant aspect of the compromise is the acknowledgment that two industries—chemicals and petroleum—should not shoulder the entire burden for funding the Superfund Program. Throughout the debate, I argued that responsible parties associated with known waste sites over 1,200 of them looked like a Who's Who of the Fortune 500. While some chemical and oil companies were identified on the lists, there also were an astonishing number of companies that have never been identified in the media with hazardous waste problems. Now, with the implementation of a broad-based tax, Congress has taken a major step in making this a more equitable funding approach.

Of course, I am disappointed about the level of taxes on crude oil. The petroleum industry has been hard hit during the past 2 years and I think it imprudent to add more of a burden. Unfortunately, we did not win that fight but we did secure the concept of a price differential between the tax on imported oil and the tax on domestic oil. This will be viewed as a favorable step, but I had hoped we could reach accord on a lower amount of crude oil taxes.

I am pleased we were able to eliminate the waste-end tax with its whole host of administrative problems and I am very pleased we fought off efforts to raise feedstock taxes beyond their current levels. When joined with the broad-based tax, this is an acceptable and reliable funding package.

Mr. Speaker, this is a well-balanced funding bill. Our environment must be cleaned up. It must be done in a meaningful way. This bill does that, and we ought to pass it overwhelmingly.

Mr. FRENZEL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from New Hampshire [Mr. GREGG], a member of the Committee on Ways and Means.

Mr. GREGG. I thank the gentleman from Minnesota.

Certainly those of us in New England and especially in the Northeast generally understand the importance of Superfund. In my own district we have had very serious problems with midnight dumpers. We have located dumps that represented serious health hazards. Those dumps have been cleaned up as a result of the Superfund.

Thus it is a very important environmental piece of legislation, and for that reason I have been a strong supporter of it.

This fivefold increase in funding of the Superfund is, I think, a very appropriate level at which to fund it so that we can ensure that not only the sites in the Northeast but the sites throughout the country will have adequate funding to be cleaned up.

There is, however, a down side to this bill, and that is the issue of where the money comes from to pay for this cleanup. For my part and I believe many other Members of the House, I think there should be a relationship between the sites and those who pollute and create the sites. I believe there should be more of a relationship certainly than the present tax scheme of this bill, more of a polluter-pay approach.

☐ 1745

I am especially concerned about the fact that there is an imported oil fee in this bill. Yes, it is small. In fact, it is so small that I doubt that it will even be noticed by the consumer. But the fact is that this opens a precedent which I believe will create a battle next year, which is going to be one which we in the Northeast are going to have to join and join aggressively to assure that this type of tax is not expanded.

But on balance, this is a good bill. It is an essential bill if we are to retain the environmental integrity of States like New Hampshire. If we are going to retain the environmental integrity of the whole United States, it is essential that we pass this piece of legislation.

Mr. CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

(Mr. GILMAN asked and was given permission to revise and extend his remarks.)

Mr. GILMAN. Mr. Speaker, I rise in strong support of the conference report on H.R. 2005, the Superfund Amendments of 1985. I wish to thank all of the conferees who helped construct this vital legislation, especially the chairmen and ranking minority members of the five committees of jurisdiction. I know they worked long and hard to fashion responsible Superfund legislation within strict monetary constraints, and they are to be commended for their diligence and leadership.

While I must state that I prefer and voted for the Superfund legislation as adopted by the House last December, I believe the measure before us today will adequately continue Federal efforts to cleanup the worst hazardous waste sites. The enormity of the hazardous waste problem has become frighteningly apparent since the discovery of contamination in the Love Canal area of Niagara Falls, New York, in the late 1970's. In 1980, Congress created a major Federal program to cleanup the worst abandoned hazardous waste sites, and set aside $1.6 billion for the hazardous waste response trust fund, otherwise known as Superfund. The law requires the Environmental Protection Agency to determine the most dangerous sited and gives it the power to force those responsible to cleanup the sites. When such action would not be fast enough, the EPA can use Superfund money to cleanup the sites and later sue to recover the money from responsible parties.

In the intervening years since the enactment of Superfund, EPA has put well over 500 sites on the National Priorities List—a list of the Nation's most dangerous abandoned waste sites, "the dirtiest of the dirty"—and has proposed the inclusion of over 300 more. My own State, New York, has 29 sites listed on the National Priorities List, with 30 more that have been proposed to be placed on the list. To date, EPA has only completed cleanup work at 13 sites. EPA estimates that between 1,500 and 2,500 hazardous waste sites will require Federal cleanup and that up to $22.7 billion will be needed to complete this necessary task. The legislation before us today authorizes $8.5 billion over fiscal years 1987-91, a modest sum considering the magnitude of the problem and the health hazards these sites present.

In light of the slow progress made thus far by EPA, this measure sets a timetable by which to begin cleanup of abandoned hazardous waste sites. Cleanups are to begin at no fewer than 175 sites within 3 years of enactment, and an additional 200 sites within 5 years of enactment. Additionally, EPA is required to select permanent cleanup solutions to the maximum extent practicable.

I am pleased that the conferees were able to include funding for radon gas research along the Reading Prong area as part of a national assessment of the problem. High concentrations of radioactive radon gas have been discovered along the Reading Prong, a geological formation that runs through parts of New York, New Jersey, Pennsylvania, and Connecticut. Numerous cases of lung cancer have been attributed to the natural emission of radon gas, and questions remain as to other long-term effects of exposure to this dangerous gas. I am deeply concerned about this problem because it affects many of my own constituents, particularly in Orange County, NY. The research is intended to lead to Federal recommendations of methods to remedy radon contamination.

Another significant provision of H.R. 2005 is the establishment of a program to provide for cleanup of leaking underground gasoline storage tanks. Our drinking water supplies are much too precious to neglect. Once the waste from these storage tanks infiltrates the water table, it is virtually impossible to prevent it from contaminating our water supplies. This measure provides $500 million for cleanup of leaking underground storage tanks where the tank owners cannot be identified or are incapable of pay for cleanup.

I also commend the conferees on agreeing to two provisions similar to those adopted in the stronger House bill. I refer to the right of citizens to sue the Government and the community right-to-know provisions. The community right-to-know provision requires facilities that handle more than threshold amounts of some 400 extremely hazardous substances to notify State commissions so that they may develop emergency plans. Additionally, releases of extremely hazardous substances must be reported immediately to local and State commissions, and the facility owner or operator must provide a follow-up emergency notice. The conferees also agreed to allow aggrieved parties to sue the Government for failure to perform mandatory duties under Superfund, and to bring suit against any person for violating the law's requirements.

The Superfund legislation is imperative for the welfare and safety of our people and the protection of our environment. Congress must act now to stave off the serious health threats, both in the long and short runs, that these hazardous waste sites pose. While this is not a perfect bill, it will continue and expand Federal efforts, which are so desperately needed, to cleanup these hazardous sites. EPA Administrator Lee Thomas has repeatedly warned Congress that the Superfund Program will be disbanded if it is not reauthorized before adjournment. We can not afford to allow that to occur. Accordingly, I urge my colleagues to join in supporting this conference report and to vote for its adoption.

I would also like to take this opportunity, Mr. Speaker, to make a personal plea to President Reagan to support this legislation. As a fellow Republican, Mr. President, I can understand some of your misgivings with H.R. 2005, but given the overriding importance of continuing Superfund, I urge you to sign this measure into law when it comes before you. The bill is a compromise bill, negotiated in good faith after almost 3 years of discussion. We must bear in mind that this bill is designed to protect the public from a menace . . . the menace of hazardous waste. Protecting the American public is a primary responsibility of the Federal Government. Accordingly, Mr. President, I urge you to lend your support to this vital legislation.

Mr DOWNEY of New York. Mr. Speaker, I yield 1½ minutes to the gentleman from New Mexico [Mr. RICHARDSON].

(Mr. RICHARDSON asked and was given permission to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, there are four reasons why the President should sign this bill and the House should approve the conference report.

First, there is no more important environmental legislation in this session of Congress.

Second, it contains two provisions that make this bill even stronger, make it landmark legislation. First, the citizen's right to sue incorrect EPA decisions; and second provisions dealing with leaking underground storage sites.

Third, it brings a more equitable financing system where no industry is unfairly burdened. It is a compromise between petrochemical, petroleum, and the general business community on who pays.

Fourth, as important as this legislation is, quite frankly, there are many of us who are tired of dealing with this issue. A lot of blood has been spilled on this. It is time to move on and pass this critical legislation.

I urge the President to sign this bill. Let him not be remembered as the President who killed Superfund. This bill is important enough for us to stay, election or no election.

Mr. Speaker, the gentleman from Michigan has been critical in this legislation. But I think there is one hero who deserves to be recognized, the gentleman from New Jersey [Mr. FLORIO], whose general policy guidelines in much of this legislation is now law. So I commend the chairman of this committee and the chairman of the subcommittee for their outstanding work, and, of course, many members of the minority who contributed greatly to critical legislation, perhaps the most important that we will pass this year.

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the gentleman from New Jersey [Mr. FLORIO] who was recently designated as a hero of the House.

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, I rise only to respond to a point that was made by the gentleman from Nebraska [Mr. DAUB] when he offered his alternative as a funding mechanism.

The gentleman suggested, if I heard him correctly, that we fund the $8.5 billion program with a feedstock tax as contained in the bill—a dry weight waste-end tax and general revenues.

Well, the feedstock tax is $1.4 billion, the dry weight waste-end tax can raise at most $1 billion, which means general revenues would be required to raise $6 billion.

We all know that there are no general revenues just lying around. Therefore, we are going to have to borrow $6 billion in order to implement the gentleman's proposal. I do not think anyone really wants to go borrow $6 billion to have the general taxpayer be required to finance Superfund, letting off those who have caused the problem scot-free.

So I respect the gentleman's efforts to try to come up with an alternative, but the alternative the gentleman has suggested really means that the general taxpayer will end up paying this amount, and I do not think that is acceptable.

Mr. CRANE. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I realize that the gentleman, always astute, could suggest that that would be a very large sum. We were looking for approximately $3 billion in a combination of reworking the other figures, a little higher chemical, a little higher feedstock, so that the combination of the numbers would have been changed around a little bit.

It is not such a bad idea, I would say to my friend, the gentleman from New Jersey, who is one of the most effective Members of the Congress, particularly when it comes to issues that deal with the environment, that we reach into the general revenue of this country for such a serious problem and share the burden much more equally than trying to carve out little niches and nooks and crannies.

I know the gentleman is concerned, for example, for a waste-end tax. So it would seem to me that in a proposal that only lost in the Ways and Means Committee of the House by 1 vote, that we were not that far off from reaching the potential for bringing those revenues into sync with an $8.5 billion, I will agree as well, not $9 billion, but $8.5 billion over the term of the 5 years of the bill.

Mr. DOWNEY of New York. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. PEASE].

(Mr. PEASE asked and was given permission to revise and extend his remarks.)

Mr. PEASE. Mr. Speaker, I rise in support of the Superfund conference report. The action we are about to take today is long, long overdue. In 1984, we thought we were going to be able to get Superfund reauthorized well in advance of its scheduled expiration in 1985, but that deadline slipped. Then even the program expiration date slipped by without a reauthorization. We have been fortunate that the EPA has managed to keep the program afloat while we have been arguing the details.

There is no environmental program more critical over the long term and more widely supported by people across the country and across the political spectrum. I think people have waited long enough for us to act—this conference report deserves the support of all of us.

Although I know that this conference report represents the best compromise we could achieve, I would like to make a couple of observations about the tax aspects of the conference report.

First, I am concerned that the financing package uses a broad-based tax to get over a quarter of the total funding. This House had repeatedly rejected a broad-based approach to Superfund taxation, and I was sorry to see us lose that principle. At least, we were able in the conference to establish that the broad-based component not be a VAT or similar hidden consumption tax.

Second, I was disappointed that the House had to give in on the principle of establishing a waste tax as part of the funding package. I continue to believe that a tax on the disposal of hazardous wastes makes good tax policy sense and good environmental sense. If we had been able to include the House waste tax provision in the conference report, it would have nearly eliminated the need for a broad-based component.

Finally, regarding the petroleum excise tax, it concerns me that the conference report taxes imported oil at a higher rate than domestic oil. The difference is slight, to be sure, and its impact on consumer prices will be virtually unmeasurable. But the VAT we successfully fended off in the conference was negligible, too.

The problem in either case is the establishment of a dangerous precedent. Under the General Agreement on Tariffs and Trade, the United States is obligated to afford "national treatment" to imports from other countries which are signatories to the agreement. In other words, taxes must be applied in a nondiscriminatory fashion. For this reason, the differential tax treatment of domestic and imported petroleum products concerns me. In general, it is not responsible policy to shift a disproportionate share of the cost of Government services upon foreigners.

But even though the package isn't anyone's ideal solution to the Superfund financing problem, it is a good compromise that will provide adequate funding for this critical program. The American people have been waiting much too long for Congress to renew and strengthen the Superfund program. Let's not disappoint them.

□ 1755

Mr. FRENZEL. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DREIER].

(Mr. DREIER of California asked and was given permission to revise and extend his remarks.)

Mr. DREIER of California. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of H.R. 2005, the conference report to reauthorize the Superfund hazardous waste cleanup program for 5 years. But I do so with great reluctance because this legislation unwisely calls for nearly $7 billion in new business taxes at a time when the tax reform bill is expected to increase business taxes by $120 billion. These taxes only contribute to higher levels of Federal spending. They allow Congress to avoid the tough spending choices that are necessary to restore sound fiscal management.

Locating and cleaning up our Nation's abandoned hazardous waste dumps is a high priority because of the potential danger to public health and the environment. But alternative funding sources are available. Instead of undermining economic growth by raising taxes, we should be cutting back on the many Federal programs that serve no useful purpose. For example, if we enacted the President's proposal to reform the Small Business Administration, the savings would nearly equal the total 5-year cost of the Superfund Program.

However, I am compelled to support H.R. 2005 because the extent of toxic waste contamination in this country is so overwhelming that environmental damage, in many instances, may be irreversible. This legislation provides the only means of ensuring that the program has sufficient resources to accomplish the required task.

There are close to 10,000 Superfund sites which have already been identified, and potentially thousands more could be discovered in the near future. Every region of the country is affected by the threat of toxic waste contamination. In my district alone, almost one-third of the water wells are so contaminated that they have either been shut down, or the water has been treated to meet State health requirements. The problem lies in identifying the sources of contamination, and that's why this Superfund Program is so important.

Mr. Speaker, H.R. 2005 epitomizes the irresponsible tax and spend policies that have encumbered this body for so long. The financing mechanism chosen to fund the Superfund Program is just another means for Congress to escape making the hard choices necessary to bring Federal spending under control. However, it is essential that were move rapidly to clean up permanently the Nation's worst abandoned hazardous waste sites. For this reason, I urge passage of this legislation.

Mr. CRANE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in conclusion let me restate a couple of observations I made at the outset of the debate, and this goes back initially to the question of culpability.

I think that we are singling out industries here where we cannot show any cause-and-effect relationship, not that chemicals do not pollute, not that part of the barrel of oil is not capable of producing pollution and toxic wastes, but we are not showing in this legislation a connection between those individuals and those industries today and the punishments, in effect, that are being heaped upon them in the form of increased taxes.

We already have taken care of that problem. We have laws on the books that are designed to punish people who engage in midnight dumping, people who do not properly dispose of their toxic wastes. In addition to that, we have adequate laws on the books right now to put the burden on those individuals who produce those wastes.

The burden of the cost of disposal rests upon the man who is guilty of producing the wastes.

We are dealing here with orphan sites. Sites where we cannot show a direct correlation between who produced the toxic waste and who should pay for it. It is a national, social problem and we are all committed as a people to working to clean up our environment.

I have no quarrel or fault with that; it is a wholesome objective. I think that being the case then that we ought to acknowledge that if we who are the consumers who are responsible really for creating the problem, that we as consumers should assume the responsibility and all of the funding, I might say, in my estimation, should come through general revenues. That is the only fair kind of tax because when you put a tax burden like this, for example, on groceries you are imposing a regressive form of taxation. It is a little bit like a sales tax but at least when we impose sales taxes we do provide exemptions for working poor people with regard to its application on food purchases and medical prescriptions.

There is no such distinction made when you put this kind of a burden on all businesses indiscriminately and they have to pass that cost on to consumers and that means that the poor person going through the checkout line in the grocery store is absorbing a disproportionate or inverted, weighted burden of taxation.

We have a Tax Code that we have defined as fair. Fair in terms of the way it is distributed on our citizens. That being the case, then we can, through that mechanism, if we find it necessary to actually increase taxes, fund the cleanup.

There is a question about whether we have to increase taxes to do it. The truth of the matter is Peter Grace has been lobbying for the past several years to get implementation of a variety of recommendations for eliminating waste and inefficiency in our Government that could reap, according to the Grace Commission, an estimated $434 billion in benefits to our Treasury within a 4-year timeframe. Let us assume that that is a gross exaggeration. We are not talking about $434 billion, we are talking about $9 billion over a 4- or 5-year period. That being the case, that is one avenue that ought to have been pursued rather than turning to the idea of raising taxes after we had this big debate on the Tax bill that we insisted had to remain revenue-neutral; we were not going to impose new taxes on the American people, and just a week later, here we come back with a quite substantial tax increase.

I think there is another ingredient of this debate that requires attention too. That is the discriminatory rates on the barrel of oil produced domestically versus the imported barrel of oil. That is a policy decision that I do not think achieved or received, rather, appropriate debate as to whether this is a wise policy direction we are taking; whether it is consistent with our long-term objectives in terms of trying to guarantee equity in the marketplace, and this disturbs me as well.

Finally, I would remind colleagues that the President has repeatedly stated that he would not accept the idea of increased taxes, and, as I noted, we can arrange priorities in such a way that we could achieve the same objective without raising taxes. It is just a question of what we deem more valuable than something else within our total budget picture.

Jim Miller sent a letter to our minority whip just recently in which he said:

> The administration has made it abundantly clear that it would strongly oppose new, broad-based corporate taxes or substantial increases in taxes on oil to fund the Superfund program.

A new broad-based corporate tax, a substantial increase in the petroleum tax and an oil import fee, it also envisions a new gasoline tax; the financing mechanism.

He concludes his letter by stating:

> We therefore call upon the Congress to pass legislation which will finance Superfund without the use of broad-based corporate taxes, substantial increases in the current petroleum tax, oil import fees or taxes on the American motorist.

The administration, having made its position abundantly clear to one and all, I think ought to give us reason to pause in rushing down this course. The fact of the matter is, we do not have to run the risk of a pocket veto because Congress is out of session. We can address it in a responsible way and we can do it before this Congress adjourns.

The final observation I would make goes back to a point that my colleague from Nebraska noted and that is the pledge that some of my colleagues on this side of the aisle, I do not know whether any on your side of the aisle have yet signed that pledge, not to vote for any tax increases. While I signed that pledge and a lot of others did, I know, I would simply remind those colleagues who signed that pledge that this will be their opportunity to demonstrate their commitment to no tax increases and follow the guidelines of this administration.

Mr. Speaker, I ask unanimous consent to yield 2 minutes to the gentleman from New York [Mr. Downey].

The SPEAKER pro tempore. Without objection, the gentleman from New York is given 2 additional minutes.

There was no objection.

Mr. CRANE. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois [Mr. Porter].

(Mr. PORTER asked and was given permission to revise and extend his remarks.)

Mr. PORTER. I thank the gentleman for yielding me this time.

Mr. Speaker, the conference report contains a new provision entitled "section 104N" that provides new authority to the agency to enter upon property for the purpose of pursuing a cleanup operation. I think that this provision undoubtedly is one of great general importance in the administration of the Superfund law.

□ 1805

However, I am concerned about a case in my own district, which is a well-known one, where PCB's have been spilled into Waukegan Harbor in Waukegan, IL, allegedly by the Outboard Marine Corp. That matter has been a matter of litigation between the EPA and OMC for almost 10 years now. It is one that we hope can be brought to a favorable conclusion.

The Supreme Court has recently granted certiorari to the Government to review a decision not favorable to it. At this moment, however, there are negotiations going on for the first time in that 10-year period between OMC and EPA that I want to nurture and encourage. My hope is that these negotiations be allowed to proceed to a favorable conclusion.

I would urge both the EPA and OMC to continue pursuing those negotiations. I would urge the EPA not to take advantage of this new provision of the Superfund legislation until the negotiations have run their full course.

My interest, obviously, is to completely clean up the PCB's in Waukegan Harbor as quickly as possible, to do it at as low a cost as is possible, and to keep the Outboard Marine Corp. a part of the Lake County, IL, community, providing the many jobs that it does to people of our area. I would like all of this to happen in a manner consistent with the plans of Mayor Robert Sabojian of Waukegan, to develop the Waukegan Harbor area to its fullest recreational and commercial potential.

All of that, I think, can best be accomplished by working through the current negotiation process, by both sides staying at the table and continuing to fairly present their positions. I am very hopeful that this will come to a positive conclusion.

These negotiations, even at this early stage, are a very, very favorable development in this divisive matter. We are anxious to see that the negotiations continue. It seems to me that the worst thing that could happen now would be for the EPA to pull back from the bargaining table and invoke this new provision of the law while these delicate negotiations that seem so promising are being carried forward.

I hope for the sake of the citizens of Waukegan, the workers of OMC, and the potential workers employed through developing Waukegan Harbor, that the EPA and OMC will persist in their efforts to reach a favorable conclusion to their environmental problem which has plagued that community for almost an entire decade.

Mr. DOWNEY of New York. Mr. Speaker, I yield 3 minutes to the gentleman form Michigan [Mr. Wolpe].

(Mr. WOLPE asked and was given permission to revise and extend his remarks.)

Mr. WOLPE. Mr. Speaker, I rise in strong support of the Superfund agreement before us today.

After long months—even years—of struggle, this bill represents a new beginning for EPA's efforts to address one of the most serious environmental threats confronting us today. Its passage is essential to the well being of all Americans.

I am concerned, however about certain components of the Superfund financing package.

One is the broad-based corporate

profits tax that represents a most unfortunate departure from the polluter-pays principle that has historically underpinned our approach to Superfund financing.

Moreover, it adds an unjustified element of tax regressivity by the inclusion of even food-related industries within its embrace.

My second concern centers on the proposed Superfund oil tax. The inclusion of this tax may well cause confusion about the position of Congress on another extremely unwise proposal, namely the oil import fee.

An oil import fee has been suggested many times over the years as a method of raising needed Federal revenues and bailing out the domestic oil industry and, no doubt, the issue will arise again in the coming Congress.

It is however, one of the most inefficient, regressive methods of raising revenues conceivable. By raising the price of imported oil, the fee gives domestic producers an opportunity to charge consumers more for their oil as well. For every $3 hard-pressed consumers must pay to support this policy, two go straight to the hands of oil producers and only one ends up in the Federal treasury. Low and fixed income households, which spend a disproportionate share of their budgets on home heating, are particularly hard hit under this scheme. At best, the oil import fee is an inefficient revenue raising tool, at worst it is a massive subsidy for a multibillion dollar industry at the expense of America's poorest citizens.

In light of these tremendous liabilities, I would like to clarify with my distinguished colleague and member of the House Ways and Means Committee, Mr. DOWNEY, that the Superfund oil tax sets absolutely no precedent for later acceptance of an oil import fee.

The most important difference between this tax and an oil import fee is that it will tax domestic oil as well as imported oil, is that right?

Mr. DOWNEY of New York. Mr. Speaker, will the gentleman yield?

Mr. WOLPE. I yield to the gentleman from New York.

Mr. DOWNEY of New York. Mr. Speaker, yes. What we are considering today is a small 3.5 cents a barrel differential in the amount of tax levied on oil, not a $5 to $10 a barrel tax on imports alone, as has been proposed in the past.

Mr. WOLPE. In addition, this tax is designed for the single narrow purpose of funding hazardous waste cleanup and has no other application, correct?

Mr. DOWNEY of New York. Yes, the oil tax is an important component of this package because petroleum products are major constituents of many Superfund sites, it has no broader significance outside the context of Superfund.

Mr. WOLPE. Mr. Speaker, I thank the gentleman for his clarification. As for the oil import fee, I know that the gentleman from New York has been a strong opponent of it in the past and I would like to assure him of my support in any future battles against this unfair, inefficient tax scheme.

Mr. FRENZEL. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from Maryland [Mrs. BENTLEY], a member of the Committee on Merchant Marine and Fisheries, who was instrumental in leadership in getting this bill out of her committee.

(Mrs. BENTLEY asked and was given permission to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, many Members of this Congress are responsible for getting the Superfund reauthorization conference report to the House floor for consideration and vote.

I sit on another committee besides the Committee on Merchant Marine and Fisheries which had a part in this and that is the Committee on Public Works and Transportation. I want to commend the chairmen of all three of the committees involved, of which I know the gentleman from Michigan [Mr. DINGELL] from the Committee on Energy and Commerce and his minority leader, the gentleman from New York [Mr. LENT]; the gentleman from New Jersey [Mr. HOWARD], from the Committee on Public Works and Transportation; and the gentleman from Kentucky [Mr. SNYDER], the ranking minority member, and on the Committee on Merchant Marine and Fisheries, the gentleman from North Carolina [Mr. JONES], and also the gentleman from New York [Mr. LENT] was then on that committee, and now it is the gentleman from Michigan [Mr. DAVIS]. Despite the fact that this Superfund bill may not be perfect and is a result of compromises, it is necessary that reauthorization be enacted. I rise in support of passage of the Superfund conference agreement.

It is imperative that the 99th Congress pass legislation to address the crisis now facing our Nation in response to release and clean up of toxic wastes. As equally important to providing Superfund reauthorization is ensuring that the funding of the necessary Superfund funds not adversely affect our domestic industrial base and the broader base of taxing laid out here that is expected to take care of that.

Within my home district, the Second Congressional District of Maryland, we have some 68 potential hazardous waste sites. Superfund will certainly help clean them up. Therefore, Superfund is necessary for a clean environment and keeping this vital program alive will continue cleaning up hazardous toxic waste.

As a result of anticipated conflicting opinions from key White House advisers to the President on whether to sign or veto the legislation, I have joined my colleagues in writing the President urging him to sign Superfund and not to veto it.

Mr. DOWNEY OF New York. Mr. Speaker, I yield myself 5 minutes.

Mr. ANDREWS. Mr. Speaker, will the gentleman yield?

Mr. DOWNEY of New York. I yield to the gentleman from Texas.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I rise in support of the Superfund conference report. It is critical that Congress act now to reauthorize Superfund. The 1-year stopgap measure enacted last year deprived Superfund of valuable momentum. Virtually no new work has been started for months. The emergency response program has operated at a drastically reduced level. Resources have been stretched to the limit. This Nation needs a tough, well-funded Superfund Program now.

Mr. Speaker, the conference report gives us such a program. The conference report reauthorizes $9 billion for Superfund over the next 5 years. I am convinced that we need every last penny. Of this, $500 million will be earmarked for a new program of cleaning up leaks into ground water from underground gasoline storage tanks. The conference report contains another new comprehensive program designed to provide the public with detailed information about chemical threats and the disclosure of toxic emissions into the air, soil, or water.

For the first time, a clear and specific set of cleanup standards is established. Each hazardous-waste-site cleanup must meet appropriate standards set in every other Federal environmental law for specific hazardous substances or, if applicable, a more stringent State law. A much-needed program of research into the storage, transportation and elimination of hazardous wastes to be eventually applied in the field is also a part of this agreement. Public participation in the cleanup decisionmaking process will be enhanced, and criminal and civil penalties for violations of the Superfund statute will be stiffened under the conference report. Significant progress has been achieved and sound public policy has been made on the programmatic side of the Superfund.

I am not as enthusiastic about the taxing provisions of the Superfund Program, Mr. Speaker. The tax on crude oil and feedstocks hits Texas industries disproportionately; while these firms will continue to finance almost one-half of the Superfund, their products make up less than 15 percent of the contents of Superfund toxic waste sites. Given the already depressed state of the energy industry and its effect on the Texas economy, I am disappointed that a lesser amount of Superfund revenue was not exacted from these industries.

At the same time, the financing package represents a compromise. For the first time, a significant amount of the Superfund comes from a broader-based tax. I am pleased with this development. After all, toxic waste is a problem caused by many components and industries and shared by our entire society.

In addition, the tax burden on domestic oil would be lightened by a tax differential placed on foreign imported oil. This too, represents progress.

In the end, Mr. Speaker, everyone had to compromise to reach an agreement. Like many others, I am not happy with every aspect of the Superfund package. But the compromise, in the aggregate, is a good one, and should be supported. The compromise represents a strong 5-year plan to continue the critical national effort to clean up America's toxic-waste dumps. I want to encourage my colleagues to vote for the Superfund conference report and allow this vital work to go forward.

All too many of us represent districts with dangerous toxic-waste sites. These sites need to be cleaned up now. In my district lies the Geneva site, one of the worst in the Nation. It contains some of the highest recorded levels of PCB's and other highly dangerous toxic chemicals. The site is only 50 feet from a neighborhood and within 1 mile from a major public school. It is dangerous and frightening to those who live nearby. The time to act is not; let us clean up Geneva now and not wait for further debate. I urge my colleagues to vote for this important measure.

Mr. DOWNEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am not going to start thanking everybody, because if I did, all of my time would be consumed thanking the people who worked on it.

I want to recognize, however, the work, in particular of two people whom I worked with, the gentleman from New Jersey [Mr. Florio], who, without his guidance and assistance, I doubt that this bill would have become law; and my friend and colleague, the gentleman from Minnesota [Mr. Frenzel], who dedicated to the principle, as was I when we were trying to determine the financing, that the polluters should pay for this Superfund bill and no one else.

We blinked a little, and so did the other side, in attempting to figure out how to finance Superfund. As future students of this legislation will find, we attempted to mix oil and water in achieving a compromise on Superfund.

The other body, more dominated by oil and chemical interests, found the way to finance Superfund would be with a road-based tax, a value-added tax. They called it a manufacturer's excise tax. We in the House came up with a plan that would have divided the financing between the oil, the chemical industries, and with a waste-end tax.

We both have to give ground, and there is good news and bad news in the way that we financed it. The good news it that the oil companies and the chemical companies bear a large burden, as they should, of financing the Superfund bill. We also managed to come up with $500 million to help deal with the problem of leaking underground storage trunks.

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The bad news is that there is a $2.5 billion broad-base tax which I am sorry to see in this bill and there is no waste-end tax.

This was the price of getting this done, I say to my colleagues. For those who lament the fact that there are new taxes in this bill to clean up the Superfund sites, let me just say that you cannot talk Superfund sites clean, you have to pay to clean them up and whether you call it new taxes or old taxes, money is necessary, a lot of it, unfortunately to deal with this problem.

We have made a serious start on funding Superfund for the next 5 years, but more will be required.

I would hope that our colleagues in the other body and those who will be here in the future to deal with this problem will go back and take a look at a waste-end means of financing Superfund and also make sure that the chemical and the oil companies that are richly responsible for this problem pay their fair share.

Now, there is some rejoicing in the oil States, probably very little given the lamentable state of their economy these days, but they see a differential in the way that we have financed the oil portion of the tax. Draw no conclusions about a precedent. I would say to my friends who want to see an oil import fee. I will fight you and so will the other members of the Ways and Means Committee tooth and nail if you think you can raise money to pay for the deficit with an oil import fee.

We have a 3½-cent differential here because we had to have one to get a bill. We would have resisted it strongly under any other circumstance.

Last, let me just say something about the entire process. We believe in this House that this is the most important piece of environmental legislation that we will deal with this year. This administration has been appalling in its support of this legislation as it has moved through the process. All they have said is what they do not like. Not once have they seriously fought for a waste-end tax or any significant revenue to deal with this problem.

Understand this, Mr. President, if you are watching. We are going to pass this bill by a very wide margin and if you veto the bill, we will override your veto and if you want to pocket the veto, we will stay in town so that you cannot do it, because the American people believe that the toxic waste problem in this country is to important for ideology. It is too important for politics, that the time is now to deal with it. We have done that. We have compromised. We have got a good bill and I urge all my colleagues to support it strongly.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Arizona [Mr. Kolbe].

(Mr. KOLBE asked and was given permission to revise and extend his remarks.)

Mr. KOLBE. Mr. Speaker, I would like to add my voice to those expressing their strong support for passage of this conference report agreement on the Comprehensive Environmental, Response, Compensation, and Liability Act. I've been impatient with the frequent delays and short-term extensions that we've had to endure since the House and Senate passed the Superfund reauthorization last year. Now, we appear to have achieved a compromise that, even with its warts, will make some giant leaps in the direction of accomplishing the original goals of Superfund.

I am especially pleased about the resolution of several issues in a direction that was consistent with my original votes on these matters. The agreements on community right to know, and on adequate funding levels is very important to the future success of the Superfund Program. I also support the concept of a broader based method of funding Superfund, rather than heaping an unbearable burden on very specific industries. The cleanup of hazardous waste is society's problem, and won't be solved unless society is willing to pay a price for its clean air and water.

What is comes down to, Mr. Speaker, and what I believe most of us here today will acknowledge with little hesitation, is that Superfund is one of the most important pieces of legislation we will consider in the 99th Congress. I support prompt, vigorous cleanup of waste dumps, and prompt, vigorous prosecution of individuals and groups guilty of dumping toxic wastes and thereby placing citizens at risk. The public has a right to know its water and air is reasonably clean and safe. But the problems are monumental and it will require a national commitment on the order of the Space Program to affect a solution. The time to start is now.

I urge passage of the conference report, and I urge the President to sign the vital piece of legislation.

Mr. FRENZEL. Mr. Speaker, I yield myself 1 minute.

(Mr. FRENZEL asked and was given permission to revise and extend his remarks.)

Mr. FRENZEL. Mr. Speaker, there has been a lot of discussion about how awful the taxes are in this bill. I do not disagree. I do not like any taxes.

Those people who signed a pledge not to raise taxes I guess have no business voting for the Superfund bill, because there is no way we can finance it other than by taxing somebody.

I would speak to the position of the administration, which was very careful to tell us the taxes they did not want used in this bill, but never told us what was acceptable.

I submit, given the program that we have here, there is nothing we can do but tax, raise some taxes to finance it. I think we have done the best we can to put the package together.

With respect to the oil import fee which seems to bother a number of our Members because it is a differential, I think it is fair to say it bothered the conferees as well; however, it is a de minimis. We are talking about a mill a gallon. I do not believe that is terribly important. It is not a precedent, should not be a precedent, certainly is not a good one if it is; but it is so small that I hope it is not going to be terribly bothersome.

With respect to the differential, we had been told that there was not enough appropriate debate. There was plenty of debate. What we did not have was enough votes to overpower the other body so that we would not have to have it in our bill.

Again, Mr Speaker, I believe that this is the best the House can do. We cannot do better next year

I hope the the bill will be approved by an overwhelming margin.

Mr. Speaker, I yield back the balance of my time.

Mr. DINGELL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Ohio [Mr. ECKART].

The gentleman from Ohio [Mr. ECKART] handled most of the work in conference, and his words should be heeded carefully by my colleagues.

(Mr. ECKART of Ohio asked and was given permission to revise and extend his remarks.)

Mr. ECKART of Ohio. Mr. Speaker, about 9 months ago I gave a speech concerning Superfund and I said that we really need to focus on the four R's dealing with it. The first was the Risk the problem posed; second, how we could deal with the Reality that the problem presented; third, how we could fashion a Responsible solution to it, and the fourth that I felt was so significant that surprised some, I said we have to deal with Republicans.

Yes, in fact what we tried to do is

what we have accomplished, what brought us here today, and that is drawing a bipartisan veto-proof consensus from both this Chamber and the other which can survive a potential veto, a potential that looms very large.

We need to deal with these realities in a way that gives us a program that makes sense. We want these cleanups to be done promptly. We want them to be done right the first time. We do not want taxpayers' dollars wasted. We want them done efficiently.

Adherence to principles like these has resulted in significant improvements in the new Superfund Program: mandatory cleanup standards, health assessments at every site, mandatory public participation, comprehensive community right-to-know, protection of ground water from leaking underground storage tanks and effective settlement provisions that makes all the difference in the world between litigating and cleaning up while at the same time preserving the important enforcement tool of strict, joint and several liability.

In reviewing the discussion of this conference report in last Friday's CONGRESSIONAL RECORD, I notice that a remark was made to the effect that the assertions of one member were likely to be contradicted by the assertions of dozens of other statements made that day. That turned out to be exactly the case last Friday evening; several contradictory statements about the meaning of this provision or that, about "our intent" and "the intent of the conferees" did indeed appear in the RECORD, and I regret that some of those statements must also be corrected or at least clarified here today.

For example, I came across certain comments on the health assessments and health effects studies required under newly expanded section 104(i), which attempted to leave the impression that the Superfund conferees had agreed that information gained from the performance of these assessments and studies was not to be entered as evidence in cases brought for damages by victims of exposure to hazardous substances, or that such information was unlikely ever to be useful in such cases.

As the primary sponsor of the House Superfund bill, and a very active member of the Superfund conference committee, I must emphasize that this does not in fact represent the intent of the conferees. In fact, this matter was never addressed by the conferees. Nowhere in the legislation itself or in any of its accompanying reports have we stated that the results of health effects studies are or are not to be used as an aid in establishing causation between exposure to hazardous substances and any adverse human health effects, or that they are unlikely to provide information of that kind. In my opinion, in fact, they are very likely to produce just that kind of information as we learn more about these substances in years to come. The amendments to section 104(i) do not change existing rules of evidence. However, neither do they limit in any way any legal rights or tools future plaintiffs may have at their disposal.

More briefly, I would like to clarify one point with respect to the application of maximum contaminant level goals [MCLG's], established under the Safe Drinking Water Act, to Superfund cleanups under section 121. Although it has been recently maintained that remedial actions involving water which is not used, nor projected to be used, need not consider MCGL's, this is not quite correct. MCGL's under the Safe Drinking Water Act should be considered and may in fact be relevant and appropriate in making clean up decisions concerning water which has the potential to be used as a drinking water source, whether or not it is currently projected for that use.

Section 121(b) establishes a statutory preference for the selection of remedial actions that involve application of "permanent treatment or alternative technologies." The legislation states that such technologies and "permanent solutions" shall be implemented to the maximum extent practicable. This preference for remedies incorporating permanent solutions and alternative treatment technologies means that such remedies are presumed to be appropriate cost-effective remedial actions and should be selected to the maximum extent practicable.

The strict requirements of this section will result in significantly more costly remedies to achieve the goal of permanency. Some have suggested that EPA should evaluate the selection in terms of "overly costly remedies where alternative cost-effective remedies provide comprehensive protection of public health and the environment." Whether it is "overly costly" is not the proper criteria and does not in this Member's opinion represent the intent of the conferees.

As I have already noted, this legislation contains an important provision (section 122) designed to facilitate settlement negotiations and expedite effective cleanup at Superfund sites while maintaining a strong and aggressive Government enforcement policy. The legislation also confirms the Environmental Protection Agency's current authority to mix Superfund money with private party funds to complete settlements in those cases where it is in the public interest, according to the criteria of the Agency's settlement policy.

However, it is not expected that the Agency will use mixed funding as a quid pro quo for settlement, nor is mixed funding authority a device for obtaining fair share settlements. The legislation maintains the strict, joint, and several liability standards of current law, as enumerated in the leading case, United States versus Chemdyne Corporation, as the principal mechanism to obtain complete site cleanup by private parties. Further, it is expected that the EPA and the Department of Justice will vigorously pursue section 107 cost recovery actions for all moneys expended pursuant to the act where responsible parties can be identified.

Section 105 of the conference report directs the Environmental Protection Agency to review the hazard ranking system [HRS] in order to enable it to assess, more accurately, the relative risks presented by the sites considered. However, this is not intended to reverse or undermine the decision of the U.S. Court of Appeals for the District of Columbia Circuit in the case of *Eagle-Pitcher Industries* v. *EPA*, 759 F.2d 905 (D.C. Cir. 1985). The HRS must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. To allow the Administrator to continue adding sites to the NPL while the HRS is being reviewed, the new amendments provide that the current HRS be applied until the effective date of the revised HRS.

The new amendments also add new subsection (g) to section 105 pertaining to the consideration of special study waste facilities in the interim pending review of the HRS. In implementing this section, EPA is only required to consider available information contained in the agency's files from whatever source it was generated. EPA is not required to search out or collect additional site-specific or waste-specific data from other Government agencies or the private sector.

As I noted earlier, the health-related authorities of Superfund, contained in section 104(i), are significantly enhanced by this legislation (section 110), which provides for health assessments to be performed at every site on the National Priorities List, and health effects studies, such as pilot studies, epidemiological studies, and health surveillance programs, to be performed as appropriate under the circumstances. The role of ATSDR is expanded, but this expanded role in the health authorities section is intended to compliment and not replace EPA's risk assessment guidelines and methodologies.

In addition, I would like to point out that, in implementing the cleanup requirements in this legislation, EPA should be particularly aware that in developing and implementing remedial actions involving dioxin, and dibenzofurans, Congress intends that the Administrator adhere to the criteria set forth in the statement of managers in the conference report. As my colleagues are aware, these chemicals are among the most toxic substances known to man. Permanent destruction of dioxin and dibenzofurans at Superfund sites is one of this bill's top priorities. In carrying out this mandate, as expressed in the legislation and the statement of managers, EPA should regard the permanent destruction of dioxin at Superfund sites as one of its top priorities as well.

The amendments also add a new section, 106(b)(2), which allows a party who receives and complies with an administrative order to petition the Agency for reimbursement of certain costs it will incur pursuant to the order. This new provision is intended to provide incentives for parties to undertake the work required in the order, even it they have legal objection to performing the work. Thus, effective after the date of enactment of these amendments, a party who receives an order can begin the work of environmental cleanup while preserving its right to raise objections in a subsequent proceeding. The amendments also clarify that penalties cannot be imposed for noncompliance with an administrative order issued under section 106 if the recipient had "sufficient cause" for noncompliance. As noted in the committee reports on this issue, we mean by "sufficient cause" an objectively reasonable and good faith belief either that the party is not liable under CERCLA or that the required response action is inconsistent with the national contingency plan. The court must base its strict scrutiny of the defendant's belief on objective evidence of the reasonableness and good faith of that belief.

New subsection 113(k) requires the President to promulgate regulations establishing procedures governing development of the administrative record and participation of interested parties. The section also requires that the President make a reasonable effort to identify and provide notice to potentially responsible parties before the response action is selected. This latter requirement is designed to bring as many PRP's into the record development process as is feasible.

However, notice under this section is not intended to trigger the procedures set forth in section 122—the settlements section—such as the moratorium for negotiations. The settlement procedures are in the President's discretion and are governed by a separate set of criteria. Nonetheless, if the President decides that the settlement procedures in section 122 should apply, the President may so state in any notice provided pursuant to the best efforts requirement of this section.

One of the most important achievements of the conference committee's deliberations is the provision on underground storage tanks. This provision, which is comprised of several amendments to subtitle I of RCRA, is designed to accomplish three fundamental objectives: First, to ensure that EPA and the States have adequate authority to order responsible parties to clean up releases from underground tanks; second, to require tankowners to be prepared to pay for the cost of cleanup and other remedial measures; and third, to provide a fund to pay for the cleanup of leaks from petroleum tanks in cases where a solvent owner or operator cannot be identified.

The first two components of the LUST provision are intended to improve the overall effectiveness of subtitle I. They are based on the commonsense principle that tankowners have to be responsible for the damage caused by leaks from their tanks. In other words, the burden and obligation to clean up contamination and compensate those who have been injured rests squarely with the tankowners.

The third component—the establishment of the leaking underground tank trust fund—will ensure that in cases where the owner or operator of a leaking tank cannot be located, or is not capable of paying for the cleanup, the problem will be addressed. The fund, which will be authorized for up to $500 million, is essential because the petroleum exclusion in Superfund—which is not affected by this legislation—precludes cleanup of contamination caused by petroleum leaks or spills.

With the enactment of this provision Congress will have completed the effort that was started in 1984 to address the threat of leaking underground storage tanks.

We include permanent destruction of dioxins in the conference report's statement of the managers to emphasize that we do want to end the toxic merry-go-round and the Superfund shell game that has plagued this program for so very long, and the leaking underground storage provision is of significance to my colleagues from Long Island, both Republican and Democrat, to deal with the very serious problem that plagues tens of thousands of sites all across this Nation.

Mr. Speaker, most importantly, I want to take a few minutes to thank some folks who were so very helpful in this process. Frankly, Mr. Speaker, we will not be here if we did not have competent staffs. For the staff of our ranking minority member I pay special tribute for they fought hard and valiantly for their positions.

To Mr. Clough and Mr. Frandsen and Mr. Ryan who worked so hard with me to help make this truly an effort that we can be so very proud of today.

To the gentleman from Washington [Mr. SWIFT] and to his aide, Mr. Gillette, who I invited to one meeting to help write one paragraph, and they turned out having to deal with the most difficult negotiations possible.

To our legislative counsel, Mr. Pope Barrow, who stayed up all night with us many nights working and drafting.

To Arnold Havens, the former ranking minority staff member of Energy and Commerce, who stayed with us so many nights.

To Janet Potts, we thank you for your work on behalf of the Judiciary Committee.

And to my staff person Anne Forristall who joined me 2 years ago to stay for 1 year on Superfund and has stayed instead to the very bitter end.

The last two people I wish to thank are two folks who made this difficult experience a pleasure. The first is the gentleman from New York [Mr. LENT] who joined me at a restaurant nearly 2 years ago and said, "Your know, we ought to sit down and try to figure out how to do it right the first time." It took us a little longer than we expected, but he was a wonderful partner and I am very thankful for his work.

And to a man who I guess I am supposed to call Mr. Chairman, but who I have grown to call John over the years, who not only enabled me to work an issue, but loaned me his staff and gave me the opportunity to fashion the kind of consensus and compromise necessary. We have dealt with the risks and dealt with the reality while being responsible. The Republicans are an important part of a bipartisan veto proof consensus that brings us to the threshold of victory here today.

To those of you who have complained that the program is too big, the tasks take too long to finish, the details are too many and minute, let me say that under almost any set of circumstances, perfect always becomes the enemy of good.

To the President who says that we do too much, to the President who says we go too fast, to the President who says we may go too far, let me say to you, take that message to Love Canal or to Rock Creek Village, OH, or to the Rocky Mountain Arsenal in Colorado, for it is those people who have waited for months, for years, and in some instances for decades. These poisons are slowly leaking their way into the ground water and creating a veritable carcinogenic stew. We have discovered without doubt or reservation that the ground is not a sponge capable of endlessly soaking up these toxic substances.

This may very well be the last major reauthorization of this program. We have done all we can do. We now give it to those who are best capable, qualified and trained to deal with it, the tools, the money and the legislative ability to make good things happens.

Vote for the bill. Support the program and give us the kind of Superfund toxic waste cleanup program of which we can all be proud.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Speaker, I thank the gentleman for yielding this time.

Mr. Speaker, the reauthorization of the Superfund Program brings a long overdue assurance to the Environmental Protection Agency, to industry, and to the public, that Congress shares the Nation's commitment to cleaning up hazardous waste. To let this session adjourn without acting on this bill would be a great legislative failure, as well as a great personal disappointment. I am hopeful the overwhelming approval in both Chambers last fall for this bill effectively demonstrates the strong support for this legislation as law.

The Superfund Program's ambitious cleanup agenda sets out to accomplish many far-reaching and diverse goals. We must never lose sight, though, of the primary motivation for this program—the cleanup of our Nation's hazardous waste sites. The number of sites found to be contaminated, unsafe, and threatening to our environment has steadily increased. As of August 1986 there are 703 sites on the national priorities list, and another 185 sites have been proposed. In addition, Congress expects that 1,600 to 2,000 sites will be added to the list within 4 years of enactment of this legislation.

Addressing this alarming trend with a stable program must not be postponed. The initial $1.6 billion Superfund Program proved that the EPA can join with industries and communities to recover, remove, and replenish in areas once damaged or threatened by hazardous waste. The long-term cleanup which has begun at 99 sites, the short-term removal actions at 714 sites, and the completed cleanups at 13 sites, are the success stories.

With the reauthorization of the Superfund Program, delays can finally end, new projects can start, and the EPA's ability to respond to the hazardous waste accidents can be assured.

The road to agreeing on legislation to meet these urgent needs has not been the smoothest. The conference has finally produced, against what at times appeared to be insurmountable odds, a bill which demanded compromise. Though it is apparent that we would not have a conference report without these concessions, I remain uncomfortable with the compromise of the original program's polluter pays philosophy. This concept was not completely sacrificed, but I believe the changes are a steep price to pay for broadening the program's scope.

But like all compromise, there is much to praise about this conference report, and I commend the wisdom of the conferees for their omission of a broader value-added tax. The regressive nature of this funding method would have set a dangerous precedent, and gone even further to destroy the essential polluter pays concept.

Despite individual provisions which may be disagreeable, we now have the opportunity to rise above the differences, to rescue and rejuvenate this critical national program, and to reaffirm our commitment to cleaning up the country's hazardous waste sites. I urge you to join me in supporting the Superfund conference report.

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Mr. LENT. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New York [Mr. GREEN], a member of the Committee on Appropriations.

(Mr. GREEN asked and was given permission to revise and extend his remarks.)

Mr. GREEN. Mr. Speaker, there is much in this conference report that I do not like. It deviates very much from the principle that the polluter pays, and the differential in the oil tax between the oil import fee and the tax on domestic production is obviously an effort, small though it may be, as the gentleman from Minnesota has pointed out, to take some money from the pockets of those of us from consuming States, and put it in the pockets of those in producing States, and I do not like that.

But I have to say that I think that it would be far worse to vote this conference report down and have no Superfund because all the contracts are being terminated and the program is about to wind up unless we pass this conference report. It would be far worse to do that than to accept this conference report, whatever its imperfections.

So, as we often do, I think that we have to accept the best we can get. We have been at it for 1 year, and I for one shall hold my nose and vote "yes."

Mr. LENT. Mr Speaker, I yield myself 4 minutes.

(Mr. LENT asked and was given permission to revise and extend his remarks.)

Mr. LENT. Mr. Speaker, I guess this debate is very close to being over. We know that for the past 2 years the Superfund has limped along not knowing where the next dime was going to come from.

Finally, on this evening, the House of Representatives is about to adopt a tougher, stronger, and expanded Superfund to clean up the Nation's toxic waste sites. We have also provided EPA in this legislation with the money to get started with this huge task.

The other body passed this bill by a resounding margin, and I would urge my colleagues in the House to vote for this bill as well in strong numbers, so that we may also send a strong message to the President.

And to our President—to our President, my President, your President—I would hope that he does not veto this bill. That would be a grave error, and I would hope that our President would sign the bill. But if veto it he must, he should veto quickly, so that before the House adjourns, before the Congress adjourns, we would have the opportunity to override that vote.

Mr. DINGELL. Mr. Speaker, I yield myself 4 minutes.

Mr. ECKART of Ohio. Mr. Speaker, I yield my remaining 2 minutes to the gentleman from Michigan [Mr. DINGELL].

The SPEAKER pro tempore (Mr. PANETTA). Without objection, the gentleman from Ohio [Mr. ECKART] yields 2 minutes to the gentleman from Michigan [Mr. DINGELL] and the gentleman from Michigan [Mr. DINGELL] is recognized for a total of 6 minutes.

There was no objection.

Mr. DINGELL. Mr. Speaker, I thank my distinguished friend and colleague, who has had so much to do with this legislation, for his kindness.

It is just 4 years ago that the first subpoena was issued on the Superfund investigation conducted by our committee. Some years before that the committee found that there were 2,000 to 3,000 Superfund sites. That number across the Nation has now grown to 20,000 to 30,000.

The original program involved an expenditure of about $1.6 billion. That was thought to be a horrifyingly large sum in that day. Today the cost of cleanup across this Nation is estimated at being in excess of $100 billion, and each of our major industrial States can anticipate a total cost of better than $1 billion or $2 billion.

This bill is only a downpayment on the problem: $9 billion is authorized here, and will be expended.

The situation in the Nation is serious. The costs are terrifying. But the cost of inaction is vastly greater: cancer, birth defects, impairment of this generation's well-being, and future generations' well-being is only a part of the cost. Contamination of air, surface waters, soil, and ground waters—not contaminated for days, weeks, or years, but contaminated for millenia, and unseeingly poisonous and perilous to future generations—are some of the costs.

The costs of inaction here are vastly worse than the costs of vigorous action.

The bill is not perfect in any of its parts, but it is more than a good bill—it is an excellent bill. None of the Members of the House or the Senate who worked on this matter would have written the bill as it is before the Members today in the conference report on H.R. 2005. Four years of hard work, investigations, subpoenas, criminal trials, months of hearings, work in markup in committees and conferences, work here on the floor in the House and in the Senate, have brought us to where we are. Hours of debate, sometimes angry, has forged the legislation before us. Eight House committees, with 53 Members on the conference committee, and three Senate committees, with 19 Members on the conference committee, have contributed to what is before the Members.

The character of the problem and the nature of the situation affecting our people screams for action. Peril to health, environment, and the safety of our people is going to be the mark of failure on this legislation. Failure to enact this legislation carries with it some peculiar costs which I would like to give to my colleagues now in a letter which I will insert into the RECORD.

This is from Mr. Lee Thomas, the Administrator of EPA. He says this:

> Superfund lost its momentum a year ago. Virtually no new work has been started for months. Our emergency response program has operated at a drastically reduced level. We have stretched our limited resources as far as we could. Now we have reached the end. I am writing to stress to you how critical the situation is. On October 1, in absence of reauthorization, I will send a 30-day termination notice to our Superfund contractors.

He goes on to say:

> Should the Congress adjourn before completing reauthorization, I will also be forced to notify our employees and our unions that furloughs will begin to take place in late December.

He goes on to say this, and I want my colleagues to hear this, and I hope that the President is listening, because this is where we are today:

> The situation is extremely serious. The consequences of failure to complete reauthorization of Superfund in this session would be immediate and extensive. By January, all emergency response and long-term cleanup work at the sites would have stopped. Many engineering studies under way or completed at national priorities list sites would be outdated. All enforcement cases against polluters would be halted. Superfund employees would have to be furloughed, and the impact of that process would disrupt the work of this Agency and other far beyond that problem.

Clearly the action on Superfund cannot wait. While it will only take a few months to totally dismantle this program, it will take years and many millions of dollars to rebuild it.

I urge my colleagues to vote for this legislation. I urge the President of the United States to heed the word of his Administrator of EPA. I urge him to heed the words and the concerns of the American people, and to sign Superfund when it is presented to him. I urge him to recognize that the problem is not short term or limited to one area of the country. It is nationwide. Every Member of the Congress has areas in his district or in his State which are affecting the health and the well-being of his constitutents, not only those who are here today, but those yet unborn.

I would urge the President to recognize that a good bill is vastly better than no bill. There is no such thing as a perfect bill which can be crafted in this body or by the administration. The way that we pay for it is relatively unimportant. The taxes which will be paid in the event of failure go far beyond and are far worse than those that would be imposed on American industry today. I know no Member of this body that likes taxes or wants to tax industry or to imperil worker jobs.

□ 1840

But I will tell you this: the consequences to this generation of Americans, to thousands of communities across this land, to millions of people and to generations of Americans to come of a failure to enact this legislation and failure of the President to sign it are far more important than the piddling economic consequences of the taxes which would be imposed under the legislation.

To discuss further this matter is folly. To act upon it now with vigor is wise.

I urge my colleagues to support the legislation overwhelmingly. I urge the President to sign it. It is time to resolve the question of Superfund. Let us move forward to clean up the land, to make it safe and to make a downpayment on one of the most desperate, pressing, and dangerous environmental and health problems that imperils the well-being of our children and the safety and the environment of generations now and generations to come.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, September 22, 1986.
Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you know, Congress has grappled with reauthorization of the Superfund law for two years. We have worked together for many months completing the substantive revisions to the statute.

Despite this accomplishment, we now face a situation which threatens the very existence of the Superfund program. Time is the single most critical factor working against a full, five-year reauthorization.

Only a few weeks remain before the 99th Congress adjourns. Should adjournment occur before reauthorization is accomplished, there will be no Superfund program when Congress returns next January.

In August 1985, I notified you that I would slow down Superfund operations while Congress completed final debate on reauthorization. No one imagined at that time that we would find ourselves 13 months later, still with no reauthorization and virtually no resources. Twice, Congress has provided interim funding, but these resources have been exhausted.

Superfund lost its momentum over a year ago. Virtually no new work has been started for months. Our emergency response program has operated at a drastically reduced level. We have stretched our limited resources as far as we could. Now, we have reached the end.

I am writing to stress to you just how critical the situation is. On October 1, in the absence of reauthorization, I will send 30-day termination notices to our Superfund contractors. These notices will result in the complete or partial termination of 12 contracts as of October 31, 1986. Once the notices have been sent, the government becomes liable for significant termination costs, even if more funds become available before October 31.

I am providing a list of contracts which will receive termination notices October 1 (Attachment A), along with a list of projects where on-going work will cease by the end of October (Attachment B).

Should Congress adjourn before completing reauthorization, I will also be forced to notify our employees and their unions that furloughs will begin to take place in late December. As part of this process, I will freeze all hiring and internal personnel actions agencywide, and terminate temporary employees.

The impact of a furlough would be felt agencywide. All Superfund employees would be directly affected. But civil service procedures enable employees with seniority and high performance ratings to take positions of other employees in the event of a reduction in force. We project half of EPA's employees would be impacted as furloughed Superfund employees exercise retention rights.

The situation is extremely serious. The consequences of a failure to complete reauthorization of Superfund in this session would be immediate and extensive. By January, all emergency response and long-term cleanup work at sites would have stopped. Many engineering studies underway or completed at National Priorities List sites would be outdated. All enforcement cases against polluters would be halted. Superfund employees would have been furloughed, and the impact of that process would disrupt the work of this agency and others far beyond that program.

Clearly, action on Superfund cannot wait. While it will only take a few months to totally dismantle this program, it will take years and many millions of dollars to rebuild it.

Thank you for your continued leadership in this matter. Please let me know if I can be of assistance in any way.

Sincerely,

LEE M. THOMAS.

ATTACHMENT A.—CONTRACTS TO BE TERMINATED ON SEPT. 30, 1986 DUE TO CERCLA REAUTHORIZATION DELAYS

Contract No.	Contract title	Prime contractor	Subcontractors	Complete (C) or partial (P) termination
68-01-6939	REM II	Camp Dresser and McKee (CDM)	Woodward Clyde; ICF; Clement Assoc.; Roy F. Weston; C.C. Johnson	P
68-01-7090	Superfund Policy Support	CH2M Hill	Versar; ICF; Environ; Envir. Law Institute; Engineering and Economic Research Inc.	P
68-01-7250	REM III	Ebasco Services, Inc.	E.C. Jordan; Environmental Science and Engineering; ICF; NUS Corp.; [illegible]; C.C. Johnson; Techlaw, Inc.; Weston Geophysical Corp.; Environmental Testing and Certification Corp.; Aquatec, Inc.	P
68-01-7251	REM IV	CH2M Hill	Energy and Environmental Planning Research Corp.; Black and Veatch; ICF	P
68-01-7054	National Priorities List Program	The MITRE Corp.	N/A	C
68-01-7253	Contract Lab Program Management	Viar	N/A	P
68-01-7159	QA/QC Support for Contract Lab Program	University of Las Vegas	N/A	P
68-03-3161	Aerial Imagery Interpretation and Analysis	Bionetics	N/A	P
68-03-3255	Emergency Environmental Response Unit	Enviresponse, Inc.	NUS Corp.; Princeton Aqua Science	P
68-03-3249	Collection and Analysis of Environmental Samples	Lockheed Engineering and Management Services Co. (LEMSCO)	N/A	P
68-03-3245	Remote Sensing	LEMSCO	N/A	P
68-03-3206	Hazardous Sample Repository	Northrop	N/A	P

Note.—Contracts in the Contract Laboratory Program (CLP) would not be terminated as we have met our minimum obligations under these contracts. However, additional work up to the contracts' maximums would not be ordered. This would significantly and adversely affect the 127 of our laboratory contracts.

ATTACHMENT B

(Remedial projects where work will stop on October 31, 1986)

SITE NAME

Region I

Coakley Landfill, CT
Yaworski Lagoon, CT
Saco Tannery, ME
Cannons/Bridgewater, MA
Charles George, MA
Dover Municipal, MA
Iron Horse Park, MA
New Bedford, MA
Resolve, MA
Sullivan's Ledge, MA
Auburn Road, NH
Somersworth Landfill, NH
Davis Liquid, RI
Stamina Mills, RI

Region II

Bog Creek, NJ
Chemical Control, NJ
Chemical Insecticide, NJ
Cinnaminson, NJ
Combe Fill North, NJ
DeRewal Township, NJ
Ewan Property, NJ
Glen Ridge, NJ
Lipari Landfill, NJ
Montclair, NJ
Myers Property, NJ
Reich Farm, NJ
Roebling Steel, NJ
Syncon Resins, NJ
U.S. Radium, NJ
Vineland, NJ
Waldick, NJ
Katonah Well, NJ
Marathon, NY
Robintech National Pipe, NY
Sarney Farm, NY
Vega Alta, PR

Region III

Kane and Lombard, MD
Southern Maryland Wood, MD
Amchem/Ambler, PA
Bruin Lagoon, PA
L.A. Clarke, VA
Leetown, WV
Ordnance Works, WV

Region IV

American Creosote, FL
Tower Chemical, FL

Region V

Byron Salvage Yard, IL
Cross Brothers, IL
LaSalle Electric, IL
Peterson Sand And Gravel, IL
Envirochem Corp., IN
Main Street Wellfield, IN
Marion Bragg Dump, IN
Ninth Avenue, IN
Northside Landfill, IN
Forest Waste, MI
G&H Landfill, MI
Mason County Landfill, MI
West K&L Avenue, MI
Arrowhead, MN
Kummer Landfill, MN
New Brighton, MN
Oak Grove, MN
South Andover, MN
Coshocton, OH
Fultz, OH
Industrial Excess, OH
Laskin Poplar, OH
Miami County, OH
Powell Road, OH
Pristine, OH
Republic Steel, OH
Skinner, OH
Eau Claire, WI
Mid-State, WI

Region VI

Bayou Bonfouca, LA
Cleve Reber, LA
South Valley, NM
United Nuclear, NM
French Limited, TX

Region VII

Cherokee County, KS
Times Beach, MO
Hastings Groundwater, NE

Region VIII

California Gulch, CO
Central City, CO
Denver Radium, CO
Lowry Landfill, CO
Rocky Mountain Arsenal, CO
Sand Creek, CO
Anaconda Smelter, MT
East Helena site, MT
Silver Bow, MT
Sharon Steel, UT

Region IX

Atlas Asbestos, CA
Coalinga Asbestos, CA
Iron Mountain, CA
Montrose, CA
Operating Industries, CA
Purity, CA
Selma, CA
South Bay, CA
Stringfellow, CA

Region X

Bunker Hill, ID
Northwest Transformer, WA
Queen City Farms, WA

ENVIRONMENTAL PROTECTION AGENCY,
Washington DC, September 22, 1986.
Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington DC.

DEAR MR. CHAIRMAN: As you know, Congress has grappled with reauthorization of the Superfund law for two years. We have worked together for many months completing the substantive revisions to the statute.

Despite this accomplishment, we now face a situation which threatens the very existence of the Superfund program. Time is the single most critical factor working against a full, five-year reauthorization.

Only a few weeks remain before the 99th Congress adjourns. Should adjournment occur before reauthorization is accomplished, there will be no Superfund program when Congress returns next January.

In August 1985, I notified you that I would slow down Superfund operations while Congress completed final debate on reauthorization. No one imagined at that time that we would find ourselves 13 months later, still with no reauthorization and virtually no resources. Twice, Congress has provided interim funding, but these resources have been exhausted.

Superfund lost its momentum over a year ago. Virtually no new work has been started for months. Our emergency response program has operated at a drastically reduced level. We have stretched our limited resources as far as we could. Now, we have reached the end.

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The situation is extremely serious. The consequences of a failure to complete reauthorization of Superfund in this session would be immediate and extensive. By January, all emergency response and long-term cleanup work at sites would have stopped. Many engineering studies underway or completed at National Priorities List sites would be outdated. All enforcement cases against polluters would be halted. Superfund employees would have been furloughed, and the impact of that process would disrupt the work of this agency and others far beyond that program.

Clearly, action on Superfund cannot wait. While it will only take a few months to totally dismantle this program, it will take years and many millions of dollars to rebuild it.

Thank you for your continued leadership in this matter. Please let me know if I can be of assistance in any way.

Sincerely,

LEE M. THOMAS.

Mr. LIGHTFOOT. Mr. Speaker, I appreciate this opportunity to clarify the reasons why I intend to vote against final passage of the Superfund conference report. Since I support the Superfund Program and have voted in favor of it in the past, I want the record to show that it is not because I oppose the program itself that I am voting against this bill today.

The primary issue before us is not whether Superfund should be reauthorized or how strict should be the standards or how strict should be the cleanup schedule or any other issue at the heart of the Superfund Program. In fact, the primary issue before us has little to do with the actual intent of this legislation, which is to clean up the thousands of dangerous toxic wastesites in this country. Instead, what we are about to vote on is whether or not to create a new hidden tax on the American consumer.

As my colleagues will recall, the House passed a Superfund bill last year which I supported. That bill simply expanded taxes that already existed in the program, drawing upon general revenues, and imposing a fee on toxic waste-intensive industries to help ensure that polluters pay. A majority of the House several times voted against attempts of the other body to create a new broad-based manufacturer's excise tax. We sent a clear message to the other body that we would not stand for a new tax on the American consumer, and rightly so.

Nonetheless, this new hidden tax raises its ugly head once again in the bill before us, and I want to remind my colleagues of a few things about this tax that they may have forgotten during the past several months.

Call it whatever you wish, but the tax in this bill is very similar to what is commonly known as a value-added tax [VAT]. It is a politically smart way to raise revenues because the taxpayers do not see their dollars going directly into the Government coffer; instead, they pay higher prices for their goods. By the same token, the VAT is also very dangerous to the taxpayer, particulary in view of the apparent inability of this Congress to control spending. As the Wall Street Journal stated: "* * * allowing this Congress to enact a VAT for any purpose under our current budgetary condition would be a large mistake * * *."

In Europe, where this type of tax is used extensively, we have many examples of how easily this tax can be abused. Sweden, for instance, adopted an 11-percent VAT tax in 1969; by 1980 it had risen to 23.5 percent. Denmark adopted a 10-percent VAT tax in 1967 which grew to 22 percent by 1980. The Netherlands adopted one at 12 percent in 1969, and a decade later it had climbed to 18 percent. Other European Nations have VAT taxes in the same range. The invariable pattern is to start out small, on the assumption that nobody will object to a bad tax as long as it's for a worthy purpose, such as Superfund. From there on, the tax never dies with the program, and almost always accelerates. The temptation is simply too great for most politicians to resist each time spending restraint fails.

I also want my colleagues to be aware that the tax in this bill is a regressive tax which places the greatest burden on the lower and middle class. Moreover, this tax would also tax processed food, which is one category which is usually exempt from taxation as a matter of fairness to the poor and elderly whose income is largely consumed by their grocery bill.

Another point we should bear in mind is that the level of funding in this bill is $8.5 billion, which places the total at $3.2 billion above the level beyond which the Environmental Protection Agency says it could not spend the funds effectively. I've promised my constituents that I will not vote for an increase in their taxes as long as I believe there is still room to cut Federal spending, and I don't intend to break that promise at this time in order to fund more than $3 billion in excess spending authority.

Mr. Speaker, I ask my colleagues to consider this new tax outside of the context of Superfund. In any other case, almost everyone would conclude that the economy does not need new taxes, and certainly not a Federal excise tax hidden in the price of all manufactured goods. As I stated, I support the Superfund Program and voted for the previous House-passed version that did not contain a new Federal excise tax, but the New Federal excise tax in this bill alone is enough reason to oppose it. I urge my colleagues to join me in voting down this bill and coming back with a more sensible approach that is more fair and honest to the American taxpayer.

Mr. RITTER. Mr. Speaker, for a year now, Superfund has been without formal authority or sufficient funds while we tried to work out an extension. We, the nontax conferees, completed our parts of the bill in August. After 3 years of effort, this new bill creates a $9 billion program over the next 5 years, up from the $1.6 billion of the first Superfund law.

Previous Superfund legislation raised funds by placing a tax on petroleum and petrochemicals, on the theory that these were the sources of most of the threatening substances in abandoned waste dumps. But, given the more than fivefold expansion of funding, the knowledge of so many others who contributed to the abandoned waste dumps and the current state of the world oil market, this legislation takes a more balanced approach to spreading the costs among those responsible.

First, the broad cross section of the U.S. economy which contributes wastes to dumps should also contribute to cleaning up those wastes. Those who produce and consume the disposed-of chemicals in batteries, used oil, household and industrial cleansers, drycleaning and degreasing fluids, and a variety of aerosols all contribute to these waste dumps.

Second, given the current state of our basic industries and our need to rely on them to not only provide crucial products, but also to provide jobs, it would be wrong to jeopardize their viability by so sharply raising their costs. Those higher costs would simply be passed on to consumers. And the consumers would purchase foreign products at lower prices. That means lost jobs.

This bill increases the Superfund budget approved back in 1980 by more than fivefold. To fund part of the expanded program, the tax conferees came up with a new tax on corporate profits. Companies with taxable income of more than $2 million would pay at a rate of $12 per $10,000. The burden would thus be spread more evenly across the whole society. The profits tax would be combined with increased oil and chemical taxes and some general revenues to make up the $9 billion.

Of the total for Superfund: $2.75 billion would come from increased taxes on petroleum; $1.4 billion from existing taxes on feedstock chemicals; $2.5 billion from a new broad-based tax on corporate taxable income; $1.25 billion from general revenues, and $600 million from interest on money in the fund and from money recovered from companies responsible for waste sites.

To support a new cleanup program for leaking underground gasoline tanks [LUST], a 0.1-cent-per-gallon tax on motor fuels would be levied to raise up to $500 million over 5 years. I am proud to have initiated this legislative concern in the Congress. My original interest grew out of problems with such leaks in Hanover Township, Northampton County and Cherryville in my congressional district.

The new Superfund legislation is a tough law. It provides more funds than either the administration's proposal or the Senate's bill. The legislation tightens the current Superfund law in every respect and gives rigorous direction to the Environmental Protection Agency [EPA] to procede rapidly with the job of cleaning up abandoned hazardous waste sites.

The bill sets rigorous standards for cleanups of toxic waste dump sites, mandates minimum numbers of remedial project starts each year and requires new protections for neighboring communities and victims of contamination.

One new section contained in the bill helps deal with the radon problem in the Lehigh Valley and in Pennsylvania and elsewhere. This section originated in the Science and Technology Committee, and I am pleased it is now a part of this bill. It will provide funds for research and abatement of radon.

In addition, the bill permits citizens to sue the EPA for failing to perform a required action.

It promotes settlements with responsible parties, because it contains provisions that give explicit authority for EPA to enter into cleanup agreements with responsible parties giving some assurance that liability is not forever unlimited.

The agreement also would require states to establish emergency planning districts to prepare for chemical accidents at facilities, and require certain firms in the manufacturing industries to disclose information on the types and amounts of certain chemicals they have onsite or release to the environment.

We all know that the existing program had significant problems. Fortunately, many of these problems are now behind us. The EPA has new management, and the administration has recognized that there is legitimate government responsibility for hazardous waste cleanup. I believe that the Superfund law provides ample incentives for any administration and any EPA to move aggressively to clean up.

It is important too that the EPA have the flexibility to deal with the hundreds of different situations at hazardous waste sites across the country. The agency needs that flexibility to take appropriate actions, without being too burdened by detailed and narrowly drawn bureaucratic requirements that the agency can not meet, that bog us all down in litigation and that end up spreading lots of money on too little cleanup.

I urge the administration to allow us to get on whith the job of cleaning up these dumpsites with the understanding that the bill represents compromises not easily achieved and perhaps more difficult to come by in the future.

Mr. KEMP. Mr. Speaker, it is with great regret that I must state my opposition to the conference report on the Superfund reauthorization. I supported this legislation when it passed the House of Representatives last year because I believe the enactment of a strong and effective Superfund Program is among our top national priorities. We have waited much too long to respond to the pressing national need to clean up the abandoned hazardous waste sites that threaten so many families in this country. I am proud that my State of New York has taken the lead in meeting this challenge through its own Superfund Program, and I have joined my colleagues in urging New York State's voters to approve the environmental bond that will provide needed funds for the cleanup of sites within our State. My opposition to this conference report does not stem from any quarrel with the plan to clean up our Nation's hazardous waste sites—or even with the overall funding level recommended by the bill. It stems from a fundamental opposition to raising taxes on the American people to finance this program.

I have recently signed a tax pledge to oppose any new taxes. I cannot vote for this Superfund financing measure without breaching faith with that promise. Whether directly or indirectly, this measure will extract almost $10 billion in new taxes from the American people.

We are told that the value-added tax has been removed from this conference report. That is true. But the so-called alternative minimum tax, petroleum excise tax, and gasoline taxes are just as harmful to our manufacturing industries, just as burdensome to low- and middle-income Americans, the elderly and the poor, and just as tempting for Congress to increase in the future because they are hidden in the prices of basic commodities.

First, the so-called alternative minimum tax is a misnomer—it's not a minimum tax at all, it is really a $2.5 billion gross income tax that will be paid by every corporation in the country with more than $2 million of income. It is wrong to think it will be paid only by corporations with high income that escape taxes entirely by taking advantage of deductions.

If this gross income tax passes, every corporation will have to figure out their taxes twice. First, under the normal corporate tax, and then, second, under the alternative tax system in which deductions like depreciation, the foreign tax credit, and the oil exploration deductions will be disallowed.

These investment incentives were put into a Tax Code for very good reasons—to promote new capital investment, avoid double taxation of foreign income, and encourage domestic oil exploration. Moreover, these deductions have already been cut back under the new tax reform bill, but only in return for lower personal and business tax rates. We shouldn't alter this balance now by hurting the heavy manufacturing industries, other capital intensive sectors, and the hard-pressed oil industry.

I am also concerned that the $2.75 billion petroleum excise tax not only is a regressive tax, but also sets a bad precedent for the future by creating a higher rate for imported oil and refined products. Petroleum taxes increase heating oil and petroleum prices and fall disproportionately on the poor and elderly. But the petroleum tax also would be higher on imported products, which amounts to a precedent for an oil import fee. The American public doesn't need higher taxes on imported or domestic oil, we need lower taxes on energy. We don't need heavier taxes on domestic oil exploration, we need lower taxes to reduce dependence on Middle East oil.

In general, I think it is a bad idea for Superfund to be financed through hidden taxes on the American people. Excise taxes on certain products and industries are extremely inefficient and distortionary to the free market. And reducing investment incentives, without lowering tax rates, is simply not good for the economy and not good for the American consumer.

If the polluter cannot be found to pay for the cleanup, then we should indeed go to the broadest-base tax of all: general revenues.

I hope that my colleagues will work with President Reagan and those of us who support Superfund but cannot support tax increases on the American people to fashion a workable reauthorization of the Superfund Program that will help clean up the hazardous waste sites around the country that need attention and funding.

Mr. Speaker, bring this bill back clean, without a tax like this imposes and I will vote yes as I have before.

Mr. NELSON of Florida. Mr. Speaker, I rise today in support of this Superfund conference report.

Protection of our environment is a necessary priority as we approach the 21st century. It is imperative that we put the Superfund Program on an orderly timetable for completion of the Nation's cleanup efforts.

The American people consider Superfund to be the most important environmental issue of this decade. This report is a good, bipartisan compromise and deserves our immediate attention. The President's own environmental advisers have urged support for this agreement.

The bill is especially significant to the State of Florida. Florida ranks high on the national priorities list of sites which pose an immediate hazard to the public's health through groundwater contamination. The nature of our aquifer system—a giant water filled limestone sponge just below the land surface—makes Florida's water resources partially vulnerable to contamination.

These environmental challenges must be met. Our people must be protected from hazardous waste and pollutants that affect our health, our ground water and our environment.

I urge a yes vote on this conference report and urge the President not to veto this important and urgently needed legislation.

Mr. GALLO. Mr. Speaker, I rise today to support one of the most important pieces of environmental protection legislation ever to be brought before the U.S. Congress. The Superfund conference agreement will authorize the $9 billion, 5 year reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act—Superfund—which will facilitate the cleanup of the Nation's worst abandoned hazardous waste sites, 11 of which are in my congressional district.

Mr. Speaker, I cannot overemphasize the importance of this program to the residents of New Jersey. Because New Jersey has been a leader in the national effort to find and clean up toxic waste sites, we are among the first to require cleanup funding. As these efforts continue across the country, the cost of cleanup and the number of sites involved in the Superfund Program will rise.

After 6 years of continuing efforts to identify the locations of toxic and hazardous materials that are a threat to our communities, we have now reached a critical point. Now that the EPA has concluded preliminary cleanup studies, we are ready to begin the actual cleanup process. Hundreds of sites across the country, including 5 of the 11 Superfund sites in my congressional district, are ready for cleanup. The costs of cleanup at those five sites alone is estimated by the EPA to be in the neighborhood of $100 million.

As the full national scope of our hazardous waste problem becomes more apparent and the cost estimates increase, we must be in a position to provide stable funding, which can only be accomplished by looking beyond the original Superfund funding sources. The Superfund tax conferees have reached a reasonable compromise to raise $9 billion over 5 years. This bill provides a balanced approach to the funding question by raising needed revenues from a number of sources in a manner that fairly apportions responsibility for the cleanup costs.

As a member of the Public Works and Transportation Committee I have had a unique opportunity to contribute to the development of this important environmental legislation. From a programmatic perspective, the new legislation sets forth stringent national standards for the cleanup of Superfund sites, establishes an aggressive schedule for EPA cleanup activities, and confirms EPA's authority to enter into agreement with responsible private parties to perform cleanups.

I am particularly pleased that the final legislation contains the community right-to-know provisions that I introduced during the Public Works Committee markup of the Superfund legislation. First, these provisions call for the States to establish emergency planning districts. They also require certain manufacturers to report to emergency and environmental officials regarding information on chemical inventories and emissions to the environment. These important provisions give our communities a "right-to-know" about chemical hazards from local manufacturing plants and will result in increased health protection for people who live near potentially dangerous sites and increased opportunities for them to take part in cleanup decisions.

The conference agreement would authorize $9 billion in Superfund spending during the next 5 years, more than a five fold increase from the $1.6 billion authorized for the programs initial 5 years. The money pays costs of Government-conducted cleanups, enforcement efforts to require companies to cleanup sites for which they are responsible, and other program costs. An additional $500 million for the new underground petroleum tank cleanup program is also included.

The legislation also provides that cleanups generally would have to meet standards and requirements of Federal and State environmental laws, but EPA could waive a requirement in specified circumstances. The provisions also would bar disposal of superfund waste at leaking landfills, require permanent waste treatment when practicable, and require review of cleaned sites every 5 years. States would be given the opportunity for an active role in choosing sites and types of cleanup actions.

The EPA would also be required to ensure that remedial and long-term cleanup work by the Government or by private parties begins at no fewer than 375 superfund sites over the next 5 years. The law also encourages negotiated settlements between EPA and companies responsible for waste sites concerning the conduct and financing of cleanups. The bill retains the current liability scheme, which makes any company that contributed to a waste site potentially liable for the entire cleanup cost.

The Superfund legislation also includes two provisons which are of particular importance to the residents of the 11th Congressional District. The first is an amendment that Congressman Roe and I originally introduced that prohibits the placement of a solid waste landfill over the Rockaway sole-source aquifer in the Passaic River basin in New Jersey. Our natural water resources are too precious to be ignored. Residents who rely on natural water supplies must be confident that their water will be protected. This amendment was introduced for that purpose.

The second amendment, which both Congressman ROE and I supported, provides $7.5 million to the State of New Jersey for the costs related to the removal of the radon-contaminated soil in the Montclair/West Orange area. I also regret that my earlier proposal during the markup of this legislation to mandate the disposal of this soil in a Federal low-level radioactive waste depository was unsuccessful.

Mr. Speaker, this legislation must be passed. It deals with problems that the American people want resolved—immediately. Yes, the cost of the program is high, but so are the risks to our citizens if we fail to act. When this legislation is enacted into law, Mr. Speaker, I want you to know that I will then be able to look back on my first term in Congress with the knowledge that the Federal Government has established an effective hazardous waste cleanup program that all Americans can be proud of.

Mr. LEVIN of Michigan. Mr. Speaker, I wish to express my support for the conference committee agreement to H.R. 2005, the Superfund hazardous waste cleanup reauthorization, and urge its adoption by the House.

Mr. Speaker, the cleanup of toxic waste is the single most important environmental issue facing this Nation. Few would question the pressing nature of the hazardous waste problem in this country, or the need for a strong Federal role in grappling with this problem. The protracted controversy surrounding this bill stems from the intense debate on the specific form and funding mechanism of this Federal role. In the last few months, the main issue has been the appropriate method for raising the funds required to support Superfund activities. The debate often has been polarized with arguments, on the one hand, in favor of almost total reliance on increased taxes on oil and chemical feedstocks and, on the other hand, near complete reliance on a broad-based tax on manufacturers. I have been among those favoring an equitable balance between these positions, and I am pleased that the conference committee has been able to strike this kind of balance.

This Superfund reauthorization would authorize $9 billion through fiscal year 1990 to clean up the worst of our Nation's abandoned toxic waste sites. In addition, the reauthorization establishes cleanup schedules to ensure EPA acts aggressively to identify and begin cleanup of these sites. The reauthorization also contains strong community right-to-know provisions and a program to clean up leaking underground storage tanks.

Mr. Speaker, the Senate has already voted to approve this conference report by a vote of 82 to 8. The White House has indicated that the President may veto this carefully crafted compromise. I would hope that the administration would avoid such a disasterous step. It is long since time for the important work of cleanup of this Nation's hazardous waste sites go forward.

I support expeditious House passage of this measure.

Ms. SNOWE. Mr. Speaker, I rise in support of this legislation, the conference report to reauthorize and expand the Superfund hazardous waste cleanup program. My support for the conference report lies in the overwhelming and urgent need to address the hazardous waste problem, in my own State of Maine and nationally.

With passage of this conference report today, Congress will have completed its work to expand and significantly strengthen the Environmental Protection Agency's [EPA] program to clean up this Nation's hazardous wastesites. This bill establishes a $9 billion program mandating EPA to begin work on over 375 sites within 5 years. It also includes important right-to-know notification requirements for communities, allows citizens to sue to force cleanup compliance, establishes a new ground water contamination cleanup fund, and brings waste problems on Federal facilities under EPA's authority. The cleanup provisions in this legislation constitute a vast improvement and a tremendous achievement by the Congress.

Since the funding authority for Superfund expired in September 1985, Superfund has been living by a shoestring. I believe it is vital to enact this legislation immediately if we are to prevent Superfund from being dismantled, to prevent a halt to work on over 100 sites where cleanup is now underway, and to keep over 1,500 EPA employees from being laid off. For this reason, Members of Congress on both sides of the aisle know we must complete our work on this legislation.

While I support adoption of the conference report to put this very important national environmental program back on track, I want to express my opposition to provisions in the conference report pertaining to the financing of the Superfund program.

This legislation includes a new fee on corporate income to help raise $1.4 billion over 5 years, requiring a $12 fee on every $10,000 in corporate taxable income. I strongly oppose this fee for two reasons. First, it moves this important environmental bill further from the "polluter pays" concept. I believe this is a mistake to spread our costs to thousands of businesses across this country which don't contribute to our Nation's hazardous waste problems. This method has never been, nor ever should be, the foundation behind any of this country's major environmental laws.

I am also concerned that the new financing provisions in this conference report requires increased taxes on petroleum. In effect, the larger fee this provision levies on imported oil and petroleum products, beyond that imposed on domestic products, amounts to an additional fee on imported oil. As a Member from a New England State which remains very reliant on imported oil, I have consistently opposed efforts to place a fee on imported oil to help raise revenues.

In simple terms, generating additional revenues from fees on imported oil remains a very bad idea, and an idea which Congress has consistently seen the wisdom to oppose. A wide range of economic data and independent studies point to the inflationary impact of an oil import fee, its dampening effect on economic growth, the likelihood of its raising costs for hundreds of different businesses, and the hardships it will create for individuals in Maine and around the country. Furthermore, supporters of such a fee point to our current lower oil prices as a reason why this fee wouldn't hurt; however, more expensive imported oil, whether in times of falling or rising oil prices, is a bad idea.

Maine's elderly and low-income residents have to worry every winter about the cost of their heating bills, a serious economic and health concern for these people. In fact, the households of the New England region, as a whole, are disproportionately dependent on the use of heating oil. In sum, this additional cost to be applied to imported oil will only exacerbate the difficulties these people face, and will raise energy costs unfairly for the entire New England region.

Mr. Speaker, we need to get Superfund going again, and this bill greatly expands and improves the current program, an important achievement in the best interests of our efforts to contend with perhaps the most serious environmental problem this Nation faces today. I believe this is an important step for Congress to take, and the cleanup requirements in this bill, after many months of negotiations, are strong, indeed. But, again, we are establishing a method of financing Superfund that has some bad ingredients, which add up to a far from perfect legislative solution.

Mr. Speaker, I support this conference report, and I urge its adoption, but not without serious objections to the financing mechanism. Since we are at the end of the session, and the program is on the verge of expiring, there is no other recourse but to pass this legislation, particularly when considering the seven sites in Maine on EPA's national priority list. So, again, with these facts in mind, I will vote in favor of the conference report.

Mr. JEFFORDS. Mr. Speaker, I rise in support of the conference report on H.R. 2005, the Superfund Amendments of 1985. The strong public health and environmental protection provisions adopted by the program conferees outweigh my objections to some of the revenue measures used to fund the program.

Back in December, I voted on the House floor for a number of amendments designed to strengthen several key provisions of the House bill, H.R. 2817. Most of these strengthening amendments were adopted by the House, which passed the bill on December 10. As a cosponsor of Chairman Florio's bill and a strong supporter of the Superfund program, I am pleased that the House conferees have upheld many of the strong provisions contained in the House bill.

Five years ago, Congress entered new territory with the enactment of Superfund. It quickly became apparent that there were a number of political, legal, technical, and institutional obstacles to achieving the public health and environmental protection goals of the bill's sponsors. Permanent cleanup strategies were not being used, a grat deal of money was being spent in the courts instead of cleaning up dangerous waste sites. EPA was unable, and some would say unwilling, to carry out the Congressional mandate on Superfund.

In this conference repnt, I believe we have removed a number of these obstacles. First, we have provided the money to get the job done. The $8.5 billion funding level should allow EPA to make concrete progress in cleaning up sites and also agreesively pursue court actions against polluters to recover cleanup costs. The goals of the original bill—immediate cleanups to protect public health and the environment combined with actions to force responsible parties to pay for them—will now be more fully achieved because EPA will have the money to get the job done.

Second, we have included important community right-to-know provisions in the bill. These provisions will require companies handling hazardous substances to notify State and local officials of the type and amount of hazardous materials used. As a result, emergency response personnel will have the tools to make contingency plans that will protect public health in event of an accident.

Third, the conference agreement includes mandatory cleanup schedules that should prompt EPA into action on our most dangerous sites. EPA must begin cleanups at no fewer than 175 sites within 3 years and at 200 additional sites within 5 years. In addition, a preliminary assessment of hazardous waste sites currently in EPA's inventory—approximately 23,000—must be completed by January 1, 1988.

Fourth, conferees agreed to adopt the House-passed standards for cleanup of Superfund sites. EPA must choose appropriate cost-effective remedial actions that consider permanent solutions and alternative treatment technologies "to the maximum extent practicable." Where nonpermanent remedies are pursued, sites must be reviewed every 54 years to ensure that human health and the environment are being protected.

Finally, the conference report includes a program to clean up leaking underground storage tanks. Under the bill's provisions, EPA—or the State—is authorized to undertake these cleanups or require responsible parties to do so. The intent is identical to other Superfund provisions: to make those responsible parties pay for cleanups, yet in cases where the delays are imminent, provide the funds to do the job now and recover cleanup costs from thos responsible later.

I again want to commend the conference for the hard work that has gone into this bill. I would like to take a few minutes to express some thoughts on the hazardous waste issue that are not directly addressed by this legislation.

As a nation, we continue to adopt reactive policies rather than attempting to address problems before they reach the crisis stage. In this bill, we take few steps to encourage the use of waste reduction and other pretreatment technologies that would reduce the volume of waste requiring disposal. Not only must we address the problem of existing sites, we must prevent the creation of future superfund sites.

The Congressional Office of Technology Assessment [OTA] released a report in 1984 outlining the inadequacy of all current methods of land disposal. Deep underground injection, the method of choice in the chemical industry, threatens aquifers into which wastes are injected. And the OTA report points out that all landfills, even "secured" landfills with clay liners, will eventually leak. In the Eastern United States, where a great deal of the Nation's hazardous waste is produced and disposed of, the water table is commonly within several hundred feet of the ground. This spells trouble for future water supplies.

The 1984 amendments to the Resource Conservation and Recovery Act help address this problem by creating new guidelines for the land disposal of certain extremely hazardous chemicals such as dioxins, PCBs, and some heavy metals. However, I think we need to do more to promote waste reduction and neutralization technologies for a broader list of hazardous substances.

I have cosponsored bills that would impose a "waste-end" tax on the land disposal of hazardous wastes. This type of marketplace incentive, together with strong RCRA regulations, can move us toward the day when only small quantities of waste are land disposed.

This brings me to a discussion of the revenue provisions included in the bill. I am disappointed that the waste end tax, set at $2 billion in the House bill, has been completely dropped in the conference report. For the reasons outlined waste end tax would complement current hazardous waste statutes by helping to internalize the costs of production processes that generate large quantities of hazardous waste.

The conferees approved a two-tiered oil and petroleum tax that sets higher rates on imported oil and petroleum. As a Member representing the Northeast, I want to make clear my opposition to any oil import fee. I want to assure the House that my vote in favor of this conference report should not be construed as a vote in favor of this differential taxing arrangement. I hope my colleagues from the South and West will not misconstrue the passage of this conference report as a precedent for future oil import fees. I think they will find that opposition to such a fee continues to be strong, not only in the Northeast and Midwest but throughout the country.

The bill also contains an earnings and profits tax. As a supporter of the "polluter pays" principle and one who has consistently opposed efforts to impose a value added tax for Superfund, I am not enthusiastic about this earnings and profits tax. However, I recognize that the oil price decline has created serious hardship for domestic oil producers and therefore grudgingly accept the conferees judgment on this matter. I commend the conferees for including provisions to guarantee that small businesses are not included in this tax.

Mr. Speaker, many Members may have problems with some portion of the tax provisions, as I do. However, the positive public health and environmental protection provisions more than outweigh the negative revenue provisions. I therefore urge all Members to support this conference report. Let's pass this legislation and get on with the business of protecting the American people and the environment from past hazardous waste disposal practices. At the same time, we must continue to look ahead and encourage the development of technologies and practices that will ensure that the work of the Superfund Program will someday be complete.

Mr. McGRATH. Mr. President, today the House of Representatives is considering the conference report on H.R. 2005, better known as the Superfund bill. This long awaited reauthorization measure comes to the House in the nick of time. Without quick action, the future of the Superfund program would be in serious jeopardy.

Recently, congressional conferees reached agreement on a $9 billion Superfund toxic-waste cleanup program. The 5-year program represents a fivefold increase over the Superfund budget approved in 1980. Among the many provisions contained in the three which represent major breakthroughs. The first, the community right-to-know provision enables the public and community emergency personnel to have detailed information about chemical threats. Adopted first by the House in response to the emergencies that arose in Bhopal and in Institute, WV, the provision will ensure that communities are prepared in case of accidents and, more importantly, will help prevent such situations in the future.

Second, the bill provides, for the first time, a process for cleanups between the Environmental Protection Agency [EPA] and responsible parties. The measure establishes a negotiation process intended to minimize litigation and encourage effective remedial cleanups.

Third, the bill contains items designed to limit litigation while strengthening the standing of citizens living around Superfund sites. The citizens' suit provision assures that any citizen can go to court for injunctive relief from parties—including the Federal Government—violating the Superfund law.

There are more than a dozen toxic waste sites on Long Island that are on the EPA's list for inclusion in the Superfund program. For an area that is almost entirely dependent on groundwater for its everyday needs, the cleanup of these sites is of paramount concern to all who reside there. I urge all of my colleagues to join me in voting for a conference report designed to eliminate the ecological nightmare of toxic waste.

Mr. BOXER. Mr. Speaker, I rise to comment on language contained in the statement of managers within the conference report, which accompanies this legislation.

Language directing the Environmental Protection Agency to proceed promptly with its final regulations for all types of ocean incineration permits is misguided. There is no urgency to implement this technology. In fact, the opposite is the case.

August 1986, the Office of Technology Assessment released its report, "Ocean Incineration: Its Role in Managing Hazardous Waste." Even this report, which was sympathetic with ocean incineration as an alternative to land based incineration, found that ocean incineration is a nonessential option in handling the Nation's hazardous waste problems. Less than 8 percent of the total waste stream is suitable for incineration of any type, and probably much less for ocean incineration.

Broad citizen opposition is evident. Over 6,000 attended a public hearing in Texas to protest when a site for burning was proposed off that coast, and over 2,000 attended and commented on the proposed research permit this spring for the east coast. The hearing officer's recommendations to EPA after the series of east coast hearings suggested that the agency not proceed with burning until legal, policy, and technical issues pertinent to the ocean incineration program were openly considered and resolved.

In addition, an environmental impact statement for ocean incineration has not been developed by EPA. I believe Federal law requires such a statement. Agency policy mandates that an EIS be issued whenever promulgating regulations under the Ocean Dumping Act, as they are doing. Instead, EPA has waived the EIS requirement. Additionally, the EPA's own Science Advisory Board has stated that substances released from at sea incineration stacks are largely unknown, as are the impacts emissions would have on the marine environment and human health.

I am the author of a bill which would prohibit ocean incineration until extensive further research is done to understand fully environmental and public health effects.

With the recent incident at Chernobyl and its consequences still fresh in our minds, let's stop and think of the dangers of surging ahead with insufficient knowledge. We should be urging restraint and further study, not a rush to a new unproven technology.

Mrs. LLOYD. Mr. Speaker, I rise in support of the conference report, but I do so with strong reservations. The cleanup of hazardous waste is of primary concern. When we began Superfund 5 years ago, we didn't know the magnitude of the problem. Hazardous waste is now recognized as a major threat to our environment. Almost 1,000 sites are on the Environmental Protection Agency's national priority list. Neely 22,000 sites are on the suspected hazardous waste list.

But my main objection is not to the cleanup proposals but to the taxing mechanism for raising revenues. This is a seriously flawed bill, and my desire would be to see a more equitable funding system. I supported the House funding mechanism when we first voted on this bill, and I actively opposed any sort of value-added tax. I am glad to see that the converence report does not retain the mechanism passed by the other body, but I am also concerned about the hybrid tax that was created in conference.

I voted against the rule to send it back to committee so they could bring us back something more acceptable. But what this Congress is faced with now is the last train out. The necessity of Superfund is extraordinary. My reservations over the tax system pale in comparison to the magnitude of the problem of hazardous waste. If we drop the ball now, if we stall for another Congress, we will only have ourselves to blame. We have an imperative to give to our children and grandchildren, if not a world that's perfect, at least a world that is as clean as when we found it.

Of a technological nature, I would like to point out to my collagues that there is a limited but critical amount of funding in this bill to attack waste problems with new technology. Although the total funding for reseach, development, and technology demonstrations totals just $100 million over 5 years, the Government and private sector savings which will result from incorporation of new waste disposal, control and reduction techniques will repay the taxpayer and private sector investment many times over. I have had first-hand experience with a Federal agency environmental problem resulting from hazardous waste at the Oak Ridge Y-12 facility. Unlike many Federal and private sector waste sites, the Oak Ridge National Laboratory had significant monitoring capability to provide reliable data on the extent of environmental problems at the complex. Nevertheless, these problems will cost several hundreds of millions of dollars to resolve and one must recognize tha the total cleanup cost is staggering since there are many sites around the country that are not even properly characterized in so far as the potential risks they pose.

As the extent of Federal agency waste cleanup problems becomes apparent and as the Environmental Protection Agency recognizes the need for new technology to mitigate environmental impacts at Federal and private sites, the Oak Ridge National Laboratory [ORNL] has come to the forefront. Oak Ridge National Laboratory stands out because of its unique capability in environmetal control techology, health effects research, and a remarkable track record of doing excellent work for other Government agencies. Thus, I believe that ORNL will become a preferred sit for the demonstration of the new waste treatment technologies as well as a center for data gathering and storage for waste treatment.

I would have preferred that the R&D funding were much greater within the overall Supperfund Cost, thus I that we must work hard to assure that the taxpayer gets the very most out of this $100 million authorization. We should also note that as the Office of Technology Assessment has recently stated in their report, "Serious Reductions of Hazardous Waste," there are great opportunities for reduction of waste through improved processes, practices, and technologies. However, less than 1 percent of polluntion control funds are spent to reduce the generation of waste. I would hope that the Congress and executive will recognize that simply trucking waste from the one site to another or containing it by very primitive means are not acceptable options for the future. We must confront this unfortunate legacy with imagination and determination. We should look to the Federal and State governments and the private sector to encourage the researching, developing, demonstrating, and deploying of new waste traatement technologies. With some pride, I expect that the ORNL will play a significant role in that important enterprise.

Mr. MCKERNAN. Mr. Speaker, I rise in support of the conference report on the Superfund amendment of 1985. It has been a long and arduous process, one which has been more akin to a game of brinksmanship with the health and welfare of the citizens of this Nation hanging in the balance. However, while the final product may not be as tough as we might have liked, the measure before us will put into place a vastly improved Superfund Program.

This agreement ups the funding level by more than fivefold, increasing the spending from the $1.6 billion provided for the initial 5 years of the Superfund to $8.5 billion over the next 5 years. Furthermore, the measure provides an additional $500 million for a new program to clean up leaking underground storage tanks. This program is designed to address the type of problem we have encountered in North Berwick, Kenduskeag, and Friendship, ME.

Other features of the conference agreement include: a cleanup schedule which requires the EPA to begin cleanup at 375 Superfund sites within 5 years; specified cleanup standards such as water quality criteria and recommended maximum containment levels established in other environmental statutes; a provision giving citizens the express right to sue the Federal Government for failure to carry out mandatory duties of the Superfund or anyone else who has violated the requirements of the law; a new program requiring companies using more than 25,000 pounds of toxic chemicals to disclose and develop emergency plans for 400 such chemicals in use so as to better inform and protect communities; and, a provision which directs the Federal Government to study health effects of toxic chemicals and conduct health assessments at Superfund sites. Also included in this measure is a new provision which requires each State to devise a plan for the disposal and treatment of toxic wastes generated within its borders.

Mr. Speaker, there are aspects of the conference agreement which are troubling to me, however, and I wish to make it clear that I believe that the funding mechanisms represents a departure from the customary polluter-pay principle. I do recognize that the problems associated with toxic waste pollution have grown to become a societal problem, and therefore, inclusion of revenues from the general treasury are not inappropriate. But, the differential tax on imported versus domestic oil and the broad-based tax which piggybacks on the new corporate minimum tax included in the tax reform bill are clearly not an appropriate means of paying for this problem. These onerous tax provisions have put many of us in a difficult position. I am opposed to the imported oil differential and the broad-based tax, but my concern about the urgent need to move the Superfund Program forward compels me to support the conference agreement. Because the rule under which the measure is being considered does not provide an opportunity to vote on the tax provisions separately from the programmatic provisions, I voted against the rule.

Nevertheless, it is vitally important that we get a strengthened Superfund Program on track so that we can complete the job of cleaning up the hazardous waste sites in Maine and thousands of others around this country. The present program has limped along for too long—it is time to once and for all put the problems of abandoned hazardous waste sites behind us. I therefore urge my colleagues to join me in voting to pass the conference report on the Superfund amendments of 1985.

Mrs. BYRON. Mr. Speaker, I rise today in support of the long-awarted conference report on the Superfund reauthorization bill. This legislation symbolizes consensus at its best. The final roadblock, the taxing authority, has been resolved. Nobody is totally happy with it, so that must mean that it's a pretty good compromise.

The conference report would authorize $8.5 billion in Superfund spending during the next 5 years, which is five times the amount of $1.6 billion at which the program was initially authorized. This much-needed money will pay the costs of Government-conducted cleanups and enforcement efforts to require companies to clean up sites for which they are responsible.

The conference report also includes requirements that cleanups meet standards of Federal and State environmental laws. And it contains a provision which is very important to my constituents in western Maryland: It bars the disposal of hazardous waste at leaking landfills, requires permanent waste treatment when feasible, and requires the review of these cleaned sites every 5 years.

I am hopeful that the new influx of Superfund revenues will allow the Environmental Protection Agency to continue addressing several current and potential cleanup sites affecting my district. Adamstown, located in my home county of Frederick, presently faces a particularly critical situation in which its ground water is contaminated to such an extent that bottled water is being provided for every use from drinking to bathing. This situation will continue until an acceptable solution is found. In the meantime, Superfund dollars are needed in order to maintain interim relief in the form of individual filters and to provide agency oversight of the independent "extent of contamination study."

Mr. Speaker, just last week, the other body passed this conference report by an overwhelming margin of 88 to 8. I urge my colleagues in the House to pass this urgently needed legislation by an equally wide margin. In this way, the American people will have spoken with a unified mind to our President: The cleanup of hazardous waste can no longer be delayed. The time is now. Thank you, Mr. Speaker.

Mr. CAMPBELL. Mr. Speaker, due to scheduling difficulties, I will miss the vote on final passage of the conference report to accompany H.R. 2005, reauthorizing the Superfund. Were I present, I would vote for this important legislation.

As a member of the Ways and Means Committee, which had partial jurisdiction over the bill, I was a cosponsor of a similar broad-based measure for I recognize the urgency of allowing the Environmental Protection Agency to resume the cleanup of hazardous waste-sites.

Mr. Speaker, it is expected that the conference report on H.R. 2005 will pass overwhelmingly, and I am pleased to express my support for this needed legislation.

Mr. GEPHARDT. Mr. Speaker, I rise today to voice my strong support for the passage of the conference report on the Superfund legislation. Any further delay in reauthorizing and refunding this program will have serious effects on the lives and property of countless Americans.

We cannot afford to not reauthorize Superfund. Throughout our country, there are as many as 10,000 hazardous waste sites. Our citizens want action. They have already waited to long.

In my own district and State, dioxin has disrupted whole communities. When dioxin is discovered, people must leave their homes and neighborhoods. Their plans and lives become disrupted by the day to day uncertainty as cleanup programs start and stop and as Agency cleanup plans change.

Just 3 weeks ago, the Environmental Protection Agency confirmed the existence of a new dioxin site in my own district, bringing to 45 the total number of toxic waste sites in Missouri. Once again, citizens in my area face a potential health risk and the burden of having to pick up and relocate.

I have always been a strong supporter of a Superfund Program that provides real results. In the past we simply haven't had the resources to do the job. The results have been sparse.

While this conference report does not contain the funding level which so many of us in the House feel to be necessary, it is a significant improvement over the program proposed by the administration and that originally passed in the other House.

This conference report—the product of so much effort on the part of many of my concerned colleagues—will provide real results. We can't eliminate all of the problems that have plagued the early years of Superfund, but this legislation will finally give us the resources to eliminate the bottlenecks and tackle the massive problem of hazardous waste. The American people are going to be the real winners.

The **SPEAKER** pro tempore (Mr. **Panetta**). Without objection, the previous question is ordered on the conference report.

There was no objection.

The **SPEAKER** pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. **CRANE**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER** pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 386, nays 27, answered "present" 1, not voting 18, as follows:

[Roll No. 443]

YEAS—386

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin

[illegible]
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
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Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka

Badham
Barnes
Bartlett
Barton
Bateman
Bates
Bedell
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Bennett
Bentley
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Berman
Bevill
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Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Bosco
Boucher
Boulter
Boxer
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Bustamante
Byron
Carney
Carper
Carr
Chandler
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Coleman (MO)
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Courter
Coyne
Craig
Crockett
Daniel
Dannemeyer
Darden
Daschle
Davis
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Dellums
Derrick
DeWine
Dicks
Dingell
DioGuardi
Dixon
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
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Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hansen
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lipinski
Livingston
Lloyd
Loeffler
Long
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy

Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Sabo
Savage
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Swift
Swindall
Synar
Tallon
Tauzin
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant

Olin
Ortiz
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Rodino
Roe
Rogers
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Sikorski
Siljander
Sisisky
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stenholm
Stokes
Strang
Stratton
Studds
Sundquist
Sweeney
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Watkins
Waxman
Weaver
Weber
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (FL)
Young (MO)
Zachau

NAYS—27

Archer
Armey
Burton (IN)
Callahan
Cheney
Combest
Crane
Daub
DeLay
Dickinson
Edwards (OK)
Hammerschmidt
Kemp
Lightfoot
Lott
Mack
Marlenee
Roberts
Robinson
Rudd
Shuster
Skeen
Smith, Denny (OR)
Stump
Taylor
Walker
Young (AK)

ANSWERED "PRESENT"—1

English

NOT VOTING—18

Barnard
Borski
Breaux
Burton (CA)
Campbell
Fowler
Gephardt
Grotberg
Hartnett
Jones (OK)
Kindness
Moore
Ritter
Roemer
Rose
Stark
Tauke
Weiss

□ 1900

The Clerk announced the following pair:

On this vote:

Mr. Jones of Oklahoma for, with Mr. English against.

Mr. MORRISON of Washington, Mr. SILJANDER, and Mrs. SMITH of Nebraska changed their votes from "nay" to "yea."

Mr. ENGLISH changed his vote from "nay" to "present."

Mr. ENGLISH. Mr. Speaker, I have a live pair with the gentleman from Oklahoma [Mr. JONES]. If he were present, he would have voted "yea." I

voted "nay." I withdraw my vote and vote "present."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ECKART of Ohio. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore (Mr. PANETTA). Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERSONAL EXPLANATION

Mr. RITTER. Mr. Speaker, I was absent from the floor at the time of the vote on the Superfund bill. Had I been here I would have joined my colleagues, the 386 other Members of the House who supported the Superfund bill.

I would add that I supported this bill strongly in subcommittee and in full committee; I voted for it on the floor of the House, and as I have said, had I been present, I would have voted for the conference report which was agreed to just a short while ago.

[NOTE.- The following excerpt from debate appeared in the Congressional Record on Oct. 9, 1986 at pp. E3519-E3520.]

Mr. DARDEN. Mr. Speaker, I am pleased to support this legislation which will provide for the cleanup of Superfund designated toxic waste sites and leaking underground storage tanks throughout the United States.

In May of this year, 1,700 waste-filled drums were discovered at a farm in Naomi, GA, within my district. The environmental protection division of the Georgia Department of Natural Resources stated that this site was the largest abandoned midnight dumping site ever discovered in Georgia. Since May, investigations have continued and local authorities believe they have identified the persons responsible for the dumping. The citizens of Walker County are lucky that a responsible party or organization may be identified. There are currently 703 abandoned sites on the national priority list which will require money from the Superfund for cleanup. At these sites no responsible party could be tracked down and identified for their criminal behavior. EPA believes that an additional 1,500 to 2,500 abandoned hazardous waste sites will be identified and placed on the national priorities list. I am pleased the community of Naomi will be restored to its former pristine beauty by the parties determined responsible for its chemical degradation.

However, for those communities within Georgia and the Nation which cannot identify the criminals who have knowingly dumped hazardous chemicals on our land, I strongly endorse the passage of this bill which will establish the funds and the guidelines for the restoration of the land to its original nontoxic beauty.

This bill will reauthorize the Superfund Program for 5 years providing $9 billion to clean toxic waste sites and leaking underground storage tanks. The bill establishes schedules for the cleanup of 375 Superfund waste sites within 5 years of enactment. Cleanup efforts must begin at 175 waste sites within the first 3 years. The conference agreement sets nonbinding goals for the EPA to begin initial evaluation of sites to determine whether they should be on the national priority list, which makes them eligible for Superfund cleanup.

Provisions are included which will allow citizens to sue EPA or other Federal agencies for failure to carry out mandatory duties set out in this legislation, and to sue anyone that may be violating the requirements of the Superfund Act.

Additional provisions require the establishment of a program designed to provide the public and community emergency personnel with information about hazardous chemicals being produced or handled at local plants. The bill requires Governors to appoint State emergency response committees. The local committees must develop a plan on how to respond to community emergencies resulting from the release of dangerous chemicals.

The legislation also requires that certain types of facilities and plants submit material safety data sheets to the local emergency response committees. These sheets must include the identity of the hazardous chemicals stored or produced at local plants, the health hazards of the chemicals, and methods to treat exposure to the chemicals. The bill also requires these same facilities to submit emergency inventory forms, which specify the amounts and location of hazardous chemicals.

On behalf of all communities in the Nation that have experienced the discovery of toxic waste sites and never identified the responsible parties, I ask that my colleagues support this legislation and pass H.R. 2005, the reauthorization of Superfund.

[NOTE.- The following excerpt from debate appeared in the Congressional Record on Oct. 10, 1986 at p. E3564.]

Mrs. ROUKEMA. Mr. Speaker, today I would again stress my strong support for the Superfund conference report, and urge the President to sign the bill in recognition that this compromise measure is the best that can be arrived at to save this critically needed program.

It has been a long and unnecessarily contentious battle that brings us to this day, and I deeply regret of delays Congress has faced in its reauthorization efforts. Reauthorization of the Superfund Program continues to be the highest environmental priority for the people of New Jersey and for the citizens of our Nation, yet Congress has allowed the program to languish in uncertainty for an entire year. Fortunately, this situation will now come to an end with our approval of this conference agreement.

It would be hard to overstate the importance of this program. At thousands of sites across the country, toxic chemicals are poisoning our air, land, and groundwater. Nationwide there are 850 sites on the national priorities list, 98 of which are in New Jersey alone. My own district in northern New Jersey contains 4 sites listed on the national priorities list. The A.O. Polymer Co. in Sparta, the Maywood Chemical Co. in Maywood and Rochelle Park, the Metaltech/Aerosystems Co. in Franklin, and the Ringwood Mines and Landfill in Ringwood are all at various stages of cleanup actions under the Superfund Program. In fact, the Environmental Protection Agency last week was forced to give 30-day notice to contractors at the Metaltec/Aerosystems site that funding could run out before Congress acted. Fortunately, our actions today will alleviate this problem.

The compromise worked out by the conference committee is an equitable one, and deserves the support of my colleagues. It would authorize $8.5 billion over the next 5 years to clean up the Nation's worst abandoned hazardous waste sites. The costs of the program will be paid for through a mixture of feedstock chemical taxes, increased crude oil taxes, a broad-based value added tax on large manufacturers, and through general Government revenues. This system will retain the important principle that polluters should pay for the harm they cause to the environment, yet will also recognize that hazardous waste cleanup is a broad societal problem, the solution to which will benefit us all. The conference agreement, furthermore, will set forth stringent national standards for the cleanup of Superfund sites, will establish important community right-to-know rules, and will direct EPA to meet a strict schedule for beginning hazardous waste cleanups across the country.

Another important provision in the bill is the $5 million it provides for EPA programs to deal with the problem of naturally occurring radon gas. The serious health threat posed by natural radon has only recently come to the attention of the scientific and health community, and this important funding will go far in determining the extent of the radon hazard across the country.

The Superfund Program addresses literally life and death issues for our people and our environment. The health of present and future generations are in jeopardy—neighborhoods uninhabitable, people who cannot use tap water because of degradation of water supplies—and the problems continue to multiply. For these reasons I plead with President Reagan to sign this legislation into law. Mr. President, you have been a great leader. The hallmark of your Presidency has been your vision and your understanding of basic values. I ask you now—listen to the anxiety and concern in the voices of the American people who in poll after poll show they understand that degradation of the environment is irreversible. The people know that there is no price tag that can be attached to the human toll of death and suffering that we invite by inaction.

Mr. President, as you yourself have said, we are not a people who know the price of everything and the value of nothing. The people know the value of a clean environment is priceless. Society will pay—either now or later—and the toll on human health and the economic costs will only be greater.

Mr. President, listen to the experts, listen to the voices of the people. Sign the Superfund bill into law.

[NOTE.- The following excerpt from debate appeared in the Congressional Record on Oct. 17, 1986 at p. E3698.]

Mr. BROOMFIELD. Mr. Speaker, I am pleased that the Congress has finally come to this important point where we can revise and reauthorize the Superfund legislation.

This is an extremely important program and the conferees have accomplished a tremendous task in bringing this bill before us. While I am sure each of us would prefer to change some part of the conference recommendations if we could, the over-all legislation deserves to be passed, and this important program needs to be reauthorized.

I wish to draw attention to one particular aspect of the bill, however. Section 110 of the bill requires the Agency for Toxic Substances and Disease Registry [ATSDR] to conduct national health studies at each of the National Priorities List [NPL] sites as well as at other sites if requested. This is an important step in trying to scientifically determine the relationship between substances at the NPL hazardous waste sites and possible human health effects. It will do much to increase our own general knowledge as well as address the fears of those who live and work in the vicinity of these sites.

However, a note of caution should be added in terms of trying to establish legal causation in an individual toxic tort case. These studies should not be considered as the final word with regard to individual health effects or injury possibly caused by hazardous waste site exposure. Many factors from various chemicals acting together to combined lifestyle and genetic factors may or may not be involved in an injury, and these factors should be fully studied before trying to establish a predictive value to the required health studies.

Where the scientific data proves relevant, the health studies data may, of course, be admitted as evidence in litigation in accord with the existing rules of evidence. The data should not, however, have a greater weight than would otherwise be accorded such a general assessment of potential health risks beyond what the scientific data would allow. There is, of course, no presumption that such studies are in and of themselves either admissable or relevant in any particular case.

With this caution about section 110, I would hope that the ATSDR will move expeditiously on the studies, and that my colleagues in the house will act to finally reauthorize this Superfund Program.